United States Court of Appeals

for the Second Circuit

APPENDIX

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75-7368

(4. '76)

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P/S

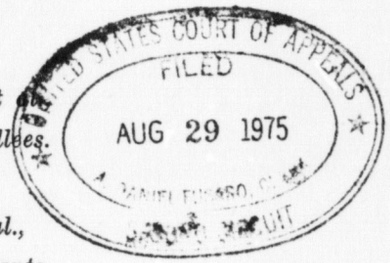
United States Court of Appeals

FOR THE SECOND CIRCUIT

JAMES C. JONES, GLORIA DEBERRY, MARY J. EUCLES, *et al.*,
Plaintiffs-Appellees-Appellants,

—against—

THE NEW YORK CITY HUMAN RESOURCES ADMINISTRATION, *et al.*,
Defendants-Appellants-Appellees.



DOROTHY WILLIAMS, JOHN GOYCO and JOHNNIE MCCOY, *et al.*,
Plaintiffs-Appellees-Appellants,

—against—

THE NEW YORK CITY HUMAN RESOURCES ADMINISTRATION, *et al.*,
Defendants-Appellants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOINT APPENDIX
VOLUME II

W. BERNARD RICHLAND,
Corporation Counsel,
Attorney for
Defendants-Appellants-Appellees
Municipal Building,
New York, New York 10007
566-4510

COVINGTON, HOWARD, HAGOOD AND HOLLAND
Attorneys for
Plaintiffs-Appellees-Appellants,
15 Columbus Circle
New York, New York 10023
265-3340

DEBORAH GREENBERG
JACK GREENBERG
JEFFREY MINTZ
Attorneys for Plaintiffs
10 Columbus Circle
New York, New York 10015
586-8397

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M I L D R E D E. K A T Z E L L, called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. OMANSKY:

Q Dr. Katzell, what is your profession?

A I am a certified psychologist in New York State, and my field of work is Measurement and Evaluation.

Q What is your educational background?

A I have bachelor's and master's degrees from Syracuse University in psychology and a Ph.D. from Columbia University in Measurement and Evaluation.

Q Do you belong to any professional associations or organizations, and, if so, what are they?

A The American Psychological Association; and within that the Division of Industrial and Organizational Psychology; the Eastern Psychological Association.

I am a former president of the Personnel Division of the New York State Psychological Association; I belong to the Association for Measurement and Evaluation and Guidance; the National Vocational Guidance Association; the National Council on Measurement and Education; the Health Professions Interest Group of the American Educational Research Association.

Those are the major ones.

Q What has been your professional experience?

A Right after I got out of college I worked as a children's social worker in Syracuse for six months.

After that I was a graduate assistant and assistant to the director of the Psychological Services Center at Syracuse University where I was involved in counselling and testing and research.

I worked with the Cooperative Test SErvice, which is one of the predecessors of the Educational Testing Service for one summer while I was a graduate student.

I came to New York in 1952 as supervisor of employee testing at Macy's, where I was responsible for the employment testing and revising and developing tests there.

In 1953 I joined the staff of the National League for Nursing, where I remained until 1973, starting out as a supervisor of test services to schools of nursing, and moving up through the ranks to become director of the division of Measurement and Evaluation.

And then in 1973, January, I became vice president of the Professional Examination Service, a private, non-profit corporation here in New York City that develops examinations.

I am currently functioning as an independent

consultant in measurement and evaluation.

THE COURT: Are you still the vice president of the service?

THE WITNESS: No, I am not. I left that position.

THE COURT: Until recently, I take it?

THE WITNESS: Until September, as a matter of fact.

BY MS. OMANSKY:

Q I am trying to recall, it seems to me that you stated that you had some connection with the State with regard to certification. I just have a note of that here.

A Only that I am certified in New York State and I understand I've been nominated to serve but have not yet been appointed to serve on the Board of Examiners for New York State.

THE COURT: Board of Examiners of what?

THE WITNESS: Of psychologists, for certification.

Q What is the nature of the services performed by the Professional Examination Service??

A It is called PES; and if I may use the abbreviation as the rest of the witnesses have, PES was established in 1942 in response to federal legislation, which required the development of tests for merit systems; and PES at that time was part of the American Public Health Association, and

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they were established in order to develop tests that would be used by State Merit Systems in the placement, selecti of various health workers.

They have since that time broadened it to health related and welfare occupations, but their work is primarily involved in developing examinations that have provided for State Merit Systems, public health nurses, environmental sanitariums and a variety of occupations with which states, municipalities and counties are concerned.

The also developed certification, licensure certification examinations for such occupations as social work for some states; psychology for most states; veterinary medicine; osteopathic surgery, and a wide variety, obviously, of health and related occupations.

While I was there I was directly responsible for examinations in the area of clinical chemistry.

I worked with occupational health nursing; I worked with osteopathic surgery and oversaw the work of other staff people who were working in the other tests. They had direct responsibility to me.

Q In part, because I am curious, for nurses, is there an entry level examination and then a later examination?

A The National League for Nursing provides a very wide variety of test services in the area of nursing.

We provide entrance exams that were used by both registered nurses and practical nurse programs throughout the country on a voluntary basis by the schools. They were competing services.

We provided achievement tests in subject matters that were used by schools of professional nursing and practical nursing. Some of these were considered to be course end tests; other were comprehensive exams designed to be given just before graduation.

Then we prepared and provided the licensing exams for both registered nurse and practical nurse, which I use by all states in the union and were for some years also used by several of the Canadian provinces.

So that all of these were developed within the divisions of which I was directly responsible.

Q Have you published any professional material?

A During the time I was at the National League for Nursing I was responsible for five or six years for a monthly article that appeared in one of the nursing journals, Nursing Outlook, under the title "Let's Examine," and each month we dealt with a different topic or problem or research report in the area of measurement and evaluation in nursing.

Some of them were very general; some of them were specific to nursing education problems.

I have also published in the Journal of Applied Psychology, an article on expectations and withdrawals from schools of nursing.

In the Canadian Nurse Journal I had articles that related to test services in nursing both at the levels of schools and at the level of licensure.

I have had articles in the American Journal of Nursing, in Nursing Research.

I co-authored an article with my husband in the Journal of the American Educational Research Association on personality tests, and I was the senior editor of a book that appeared in 1972 entitled Women in the Work Force.

MS. OMANSKY: I move that Dr. Katzell be admitted as an expert in the area of -- a psychometric expert -- would that be correct?

MR. MINTZ: We have no objection to that. I can hardly do that since I at one point considered consulting Dr. Katzell myself.

THE COURT: Some day that happy time is going to come where both sides will agree on the expert and get one opinion.

BY MS. OMANSKY:

Q I might ask, Dr. Katzell, have you ever constructed

an examination?

A Yes. I have constructed an employment examination used for aids in hospital settings.

I have carried primary responsibility for the construction of several examinations.

In these instances it has been primarily my role to put together an examination to satisfy a test plan or blueprint that has been developed cooperatively or by others, and to work with materials which I might develop, or which might be submitted to me by experts who are particularly knowledgeable in a content area to which an examination related.

In those cases my function would be primarily to do the psychometric review and revision of the test questions if I did not write them myself.

THE COURT: In how many instances was it that you worked in one way or another on the construction of a test, Doctor, approximately?

THE WITNESS: 20, sir.

Q Now, when was your first contact with the City of New York with regard to the examinations of Supervising Human Resources Specialist?

A From my calendar I see it was November 26th.

Q What did you agree to do at that time?

A I agreed to loo over the two examinations in question and the test analysis on which they had been based, and advised your office as to any issues or problems that I saw.

Q Did you agree to testify for us at that time?

A No, I did not. I think it was not until quite a bit later in December that I agreed to testify.

THE COURT: When you talk about the test analysis, is that the job audit that we have been talking about in this case?

MS. OMANSKY: Yes.

Q My next question is, what materials did you have to work with?

A I received a copy of the two exams, 1631 and 2013; the announcements that were posted for each of those and the task analysis on which the test plans had been based.

THE COURT: You say test analysis or task?

THE WITNESS: The task analysis on which the test plan was based.

THE COURT: You got the test plan?

THE WITNESS: Yes. It was attached to the examination.

Q When you looked at the materials that you had, how did our job analysis compare with your job analysis?

A There was considerably more information there than I was accustomed to finding when I had to work on tests based on job analyses, and it impressed me with its completeness.

Q Is it important to know the competency of the person who originally performed the job analysis?

A Well, I would like to know that the person was competent, and I would want to know something about their ability to do it, because a job analysis could look adequate even though it omitted points that one would want to have covered.

Q Do you know who prepared the job analysis?

A Mr. Rosenberg.

Q Did you have an occasion to determine his competency, and, if so, how?

A I met Mr. Rosenberg early in December, and I raised questions with him that had arisen when I reviewed the job analysis, and learned from him of his years of experience, I believe it was 15 years of experience, and the thousand of job orders and analyses for which he has been responsible, and the classification of many jobs in terms of these, and, certainly from his experience in doing this he would seem to be competent, and he said the right things in the right way that one would think he was competent.

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Q Is it an essntial that a person who does a job analysis have formal educational training in test construction?

A I would saynot. To my knowledge most of the job analyses with which I have had to work in test construction were prepared by people who had virtually no experience or training in test development.

I think it would be helpful to the person developing the test if the person doing the job analysis had some awareness of how his output served as input for the test construction.

But in terms of knowing how to construct a test, in my experience we are becoming so specialized that the job analyst usually knows little about test construction, and the test constructor may know very little except text book learning about how a job analysis is done.

I have never done a job analysis. I have seen many of them; I have read about them; I have studied about them, but I have never done one.

Q Could you do a job analysis for a test for psychologists?

A I would need to do some homework before I set out to do it, but I think I could.

Q Now, you said that after you had been given the

documents and looked them over and you met with Mr. Rosenberg, you said that you had some questions and that you discussed some of those questions, and how they were resolved, if they were resolved, and so forth.

4 A The first thing that I reacted to was the fact that Mr. Rosenberg indicated the names of four individuals in four different slots whom he had observed and interviewed together for information about the jobs they were doing, how they do it; and I mentioned in conversation with Mr. Rosenberg that at that time, at the time these orders were done, there were only nine individuals holding the title of Permanent Supervising HRS; so that the fact that he observed or interviewed four of the nine represented almost a 50 per cent sample of the population that existed.

I learned that it is city policy to base these analyses on permanent employees and not on provisionals.

THE COURT: You were aware that there were an awful lot of provisionals, so the percentage would be nothing like that.

THE WITNESS: I was not aware of how many provisionals at that time, but in the course of that conversation I learned that there were many provisionals.

I further discussed with Mr. Rosenberg the people and the categories in which they dealt with whom

he had verified the information that he got from the incumbents, and they represented the peers and superiors of those -- subordinates -- no, peers and superiors of those whowere in the positions, and in a variety of relationships to the incumbents, and from them he got information about additional tasks, so that the material he presented listed many tasks, I would guess there might be 25 or 30 different tasks, and I discussed with him how he moved from the itemizing of taks to determining the categories that he specified at the endof the task analysis --

Q Are you talking about the knowledge --

A The knowledge and skills categories which then became the basis of the test outline or test plan.

And he indicated that it had to do with the frequency of occurrence of these various activities, such things as community relations and awareness of the current status of activities, department, organization, and so on of HRA; things having to do with interpreting written material, preparing written material, budget, management supervision, all of these things which one could see from the list of tasks were fairly evidence, and they were reflected then in the list of the knowledges and skills; and those, in turn, became the basis for the test plan.

And I learned from Mr. Rosenberg that the relative

weights that were assigned to these knowledges and skills in the test plan were derived from the frequency with which the relative aspects occurred in his analysis of the jobs.

All of this is the way it is described in the books.

Q Did you reach any conclusion about the adequacy of the job analysis and test plan as laying a proper foundation of preparing an examination for Supervising Human Resources Specialist?

A From my experience it was much better done than many with which I had to work; it was more complete, the end product, the test plan were typical of test plans where knowledges and skills were categorized and proportional weights are listed to guide the person developing the examination.

Q Based on your knowledge of professional standards, how did our job analysis stack up?

A I thought it was a good one.

Q Consistent with professional standards?

A Better than consistent I think I would have to say.

Q Now, did you have an opportunity to examine the examinations, numbers 2013 and 1631?

A Yes, I did.

Q Strictly from a psychometric viewpoint, what con-

clusions did you reach about the construction of the items?

THE COURT: Well, we had one of these problems yesterday, and one of the reporters was kind enough overnight to fish out the definition of "psychometric" for me.

I would like to have the doctor tell me what she means when she says from a psychometric point of view.

MS. OMANSKY: I said that.

THE COURT: Well, what she means by answering that question.

THE WITNESS: Metric meaning measurement and psycho referring to psychological measurement, and psychometric standards for a test would refer to those standards that the profession of psychology has set down for it to guide itself in terms of adequacy of examinations; the wording of questions; they might get into statistical aspects; norms if a test is normed -- all of these things that have to do with characteristics of adequate tests.

THE COURT: Thank you.

THE WITNESS: And we use the term "psychological tests" very broadly and not in terms of clinical personality aspects only. A psychological test is much broader than that.

THE COURT: All right.

Q Well, looking at the examinations, did you reach any conclusions of the items?

A Well, before answering that directly I would have to qualify what I am going to say.

In developing test questions we are guided by literally dozens of rules to which we try to adhere.

THE COURT: In your profession or people in general?

THE WITNESS: In the profession.

For example, we try to avoid wording questions in the negative - "Which of the following is not true?"

We try to avoid "All of the following except one" is something or other.

In fact, we try to avoid putting into the stem of a question "of the following."

We try to word the question so that when you finish reading the stem it is evident to you what answer you are looking for. The premise sets forth the information you are seeking.

The horrible example of a violation of that is that if the stem of the question said "an egg is:" - you don't know whether they mean scrambled or created by a hen or what they mean about the egg.

If you read the stem you should know what you are

looking for in the answer.

There are books on these things and pamphlets and pages of material, and it is virtually impossible to write a quesion that does not violate some rule.

THE COURT: I take it that the end purpose of all these rules is to communicate as clearly as possible?

THE WITNESS: That is right. And sometimes to communicate one thing you have to violate a different rule.

So that one of the things that concern me in looking at the test is the fact that many of the questions say "of the following," and then set forth the premise.

But in the case of civil service examinations they have been challenged in the past because candidates cited that something other than one of the following might have been a preferable option, and it wasn't offered.

So now civil service examinations tend to say "of the following which is the best answer?"

So in looking over the exam it was quite evidence thatsome of the rules that one sees in the books had been violated, and, as I said at the outset, it is very difficult to write a question that does not violate one rule or another.

But there were good options. The options were all about equal attractiveness as one read them to the

person who knew nothing about the subject matter, and this is one of your goals in writing questions, that the person who knows the subject will be able to go to the right answer; the person who doesn't really know will be guessing in the dark among things that look pretty equally attractive.

Some of the items were better than others.

The items, for example, in the area based on the reading paragraphs were quite typical of the kinds of questions one finds in many national tests that are trying to get at verbal skills, reading comprehension; the items on graph and table interpretation are also quite typical.

This does not mean they are easy items, but for an exam of this sort one is not focusing on an easy exam or a totally difficult exam. What you are looking for is questions with a range of difficulty.

If the questions were equally difficult for everybody you wouldn't end up with a list, because everybody would get about the same mark, and you would have a very difficult time choosing among the people.

So you include some easy questions and some moderately difficult questions and some very difficult questions for the whole group, so that you will get a spread of performance in the total population that takes the exam, and thus come out with a list in rank order.

Q Now, are there any means other than subjective judgments in checking whether the examination questions were properly constructed?

A Well, one can look at an item analysis and get some information about the way the test was constructed, its adequacy.

Q I believe we did provide you with this --

THE COURT: What exhibit number?

MS. OMANSKY: Plaintiffs' Exhibit 7.

THE WITNESS: I have 2013 high and low?

Q 2013, yes.

Now, what is the item analysis -- perhaps you could redefine what an item analysis is, or this one is, anyhow, and tell us what you could observe from the item analysis?

A In the procedure that was followed here, as I understand it, the city, to do an item analysis, randomly selects 300 papers from the total population, in this case 2013, and from within that 300 selects the 100 with the highest score and the 100 with the lowest score.

They then take those 200 separately, and for the highest 100 determine how many of the hundred selected each of the four options for each question.

And similarly for the low group, how many selected each of the four options for each question.

By looking at the item analysis youcan see, for example, that in virtually every question -- I believe there is only one exception -- the candidates in the high group answered with a greater frequency the right answer than those in the low group.

That one question is question 11, and it has many problems.

The right answer is the right answer, and it has been published in the popular press, but the question did not work in the way it was intended to work.

The low scoring group answered it correctly more often than the high scoring group, but neither of them answered it as frequently as one would by chance.

THE COURT: What was the question?

THE WITNESS: That was the one that had to do with morale and productivity.

MS. OMANSKY: I will read the question, your Honor.

THE COURT: Thank you.

MS. OMANSKY: "Question 11: Recent studies of morale and productivity tended to show that (a) the correlation between morale and productivity is rather low;

(b) High morale is associated with high productivity;

(c) Low morale is associated with high productivity;

(d) Low morale is associated with low productivity.

THE WITNESS: And the right answer was (a).

Q You said it was published in the popular press. What do you mean by the popular press?

A I happened to have read an article about it in the Times.

Q Of the New York Times?

A Yes.

Q Do you think that somebody who was perhaps interested -- that this was in the area of supervision -- would somebody be likely to pick up that kind of item?

A That was the reason I picked it up, because it was of interest and relevant to the work I was doing at the time I read it.

THE COURT: I don't think the doctor purports to be an expert on this, does she?

MS. OMANSKY: But the point is, your Honor, just as you pick up in the popular press decisions about law -- I mean the point of it is that it was not such an academic point that it was never mentioned in the popular press.

THE COURT: I dont remember the particular article in the Times, but are you referring to material such as that relating to experiments of the American Telephone

Company where they were trying to improve interest in the job by getting people --

THE WITNESS: Those are job enrichment studies, and there are many of them.

THE COURT: -- or union efforts to get away from boredom on assembly line jobs and things of that kind?

THE WITNESS: Right.

BY MS. OMANSKY:

Q Would you like to continue?

A Further in the item analysis c .e can see that virtually all of the options are, shall we say, working. That is, within the high group and the low group there are hardly any alternatives that had been offered that somebody didn't think was a possible right answer.

There are very few of those.

Naturally, there are more in the low group who picked some of the wrong options.

In fact, in the high group there are a few questions that were answered correctly by a hundred per cent, I think three or four questions of that sort.

This also is some evidence as to the adequacy of the content of the questions, and the fact that all of the options are working, as we say. And the fact that by and large in the high group, and I think virtually without

exception, better than a chance proportion of the group selected the right answer.

THE COURT: You mean on each question?

THE WITNESS: On each question. In the high group it was typically --

THE COURT: Except for question 11?

THE WITNESS: Except for question 11, which was our horrible example.

And, incidentally, until one compiles these statistics in any test development, one is likely to find one or more questions that are not working the way you wanted them to, and this is one of the reasons that you analyze the results afterwards.

So that if the question goes back, as it does in many testing companies, if the question goes back into a reservoir of questions from which future tests will be developed, that you won't use the defective question at least without revising it, or seeing whether the times have changed.

Sometimes a question that was good deteriorates because of new developments; sometimes a question thatwas very difficult becomes very easy because of publicity,and things of that sort, related to its content.

So from the item analysis it gave a kind of in-

formation that I hoped might be evident about the exam. Certainly the high scoring people tended consistently to select the right answer, meaning that with the exception of question 11 the tests were a positive indicator. Those who did well on items did well on the test as a whole, and question 11 was what we call a negative indicator, those that did less well did better on the item.

THE COURT: What was the correct answer to 11?

THE WITNESS: (a) There is very low correlation between the two. It is a complex variable, productivity and morale, and there are other things apparently intervened which are currently being studied.

BY MS. OMANSKY:

Q In what type situation would you be interested in the correlation between productivity and morale?

A Practically any working situation where supervisors would --

Q Supervisory people?

A -- supervisors would certainly want to know whether the moral for which they have some responsibility is in any affecting the productivity of their work groups, whether that is something they can control, or, at least, intervene in something else that controls.

Q I think this item 11 you said was a horrible question --

THE COURT: She said it was a horrible example.

THE WITNESS: Right.

Actually it is a good question. All of the options are attractive. There is clearly a right answer but a lot of people don't know it, and the information that it is asking about is certainly, in my experience as a supervisor, is unrelated to supervision.

Q So you would just say that the question --

A The statistics are very bad.

Q The statistics are very bad?

That means it was an awfully hard question?

A That is correct.

Q And your good people, those that you want to pull out from these exams, if there were lots of questions like these presumably you would not be getting the good people?

A That is correct.

Q What weight should be given to the opinions of persons who take an exam as to job relatedness?

A Well, in the years that I worked for National League for Nursing, I dealt with large numbers, maybe hundreds, maybe thousands, of candidates who had taken nurse licensing exams, and I got the impression that

those who failed very frequently cited the exam as being unrelated to their education, unrelated to what they were doing in their job, or just generally irrelevant.

Whereas those who did fairly well on the exam were more likely to indicate that it was related to what they had been taught in school; it was related to what they were doing on the job, and so on.

So I have rather come to the conclusion that I would have to discredit the opinion of people who failed an exam in terms of its relevance. I would prefer to get the judgment of people who are knowledgeable about the job in reviewing the content of an examination for its relevance to the job.

THE COURT: Relating that to the situation we actually have here, what weight do you attach to the fact that in this particular case -- let's take the promotional exam, a very substantial number of the people who took the exam were actually in the job already, and yet we know the plaintiff class, at least, in this case, had a large number of failures.

THE WITNESS: The significance I would attach to it I think may be related to the wide variety of positions, and I have seen some of the variousposition descriptions related to this, and the fact that people may be function-

ing somewhat narrowly, and yet are eligible for assignment to a general list where they must be knowledgeable in a broad category --

THE COURT: In other words, somebody may be doing quite a good job in MDT, and know nothing or very little about ACD or the Social Security Act?

THE WITNESS: Right.

Q Would you, in a sense, summarize your opinions as to what you are testifying to?

A The job analysis on which this plan was based impressed me with the adequacy, thoroughness and completeness with which it was done; providing a far more complete information than I have usually been fortunate enough to work with in developing tests, and the test itself, without being expert in the content, the part of the content with which I had familiarity, the questions seems to be well constructed, seem to be clearly based on the test plan, and the statistics that I was provided seem to substantiate that the questions were in general doing what they were designed to do for the total group, and it seemed to me competent, adequate and better than adequate, better than many with which I have had to work.

THE COURT: When you say the statistics given to you, you mean --

THE WITNESS: The item analysis information, yes.

MS. OMANSKY: No further questions.

MR. MINTZ: Would you wish me to begin cross examination or do you want to start after lunch, your Honor?

THE COURT: I guess it is going to be quite extensive?

MR.MINTZ: It is going to be more than a few minutes.

THE COURT: All right, why don't we break at this time.

We will return at 2 o'clock.

(Luncheon recess.)

AFTERNOON SESSION

(2:00 p.m.)

M I L D R E D E. K A T Z E L L resumed.

CROSS EXAMINATION

BY MR. MINTZ:

Q Dr. Katzell, in the recital of your own experience you gave a number of examples of professional-type positions in which you had a principal or some type of responsibility for constructing an examination. My recollection and comprehension of those were that they were all, I believe all, jobs of a fairly technical nature, involving a definite body of knowledge -- nursing requiring certain knowledte in the health sciences, you mentioned chemist, osteopath. Did I understand that correctly or were there positions that you designed tests of which were generalized-type jobs?

A Well, for one thing, you are talking of nursing as if it were a specialized job, and nursing actually comes into several categories. There are a great many levels and a great many specialties in nursing, although they are tested on a generalized test.

THE COURT: Do you think you could define nursing as the only occupation not included in a supervisory HRS?

THE WITNESS: I didn't come across any nurses in that, but there may be some.

The tests there are related to a very general test plan where the individual being tested must be familiar with the broad gamut of the content, although she may upon receipt of her RN be functioning in a more narrowly defined area, such as working exclusively in a pediatric or psychiatric or public health setting, things of that sort. But they are tested in the broad generalities.

Q I understand that the test may be broader than the job. What I am concerned with is as to whether there is a difference where you are dealing with a job where most of your skills are of a very subjective sort of nature. At least I may be wrong but it seems to me this is the kind of job we are dealing with here. It is not knowing how to administer a hypodermic, it is not knowing how to deal with a child having a particular health problem, it is something -- it is principles of supervision and how one applies those. What I am asking is if you have had experience in designing tests, if you agree with my premise, for jobs of a more subjective nature, such as this.

A Well, I still come back to the fact that nurs-

ing is very general. Such as this, I don't know that anyone has encountered a job that is quite as general as this.

Q Given that fact, that there may perhaps be no job in existence more broad than that of a supervising human resources specialist, what special difficulties does that present for the people involved with constructing a test?

A One starts with a test plan where the categories, where the tasks have been categorized, and relates questions to those categories, draws questions from a reservoir, if that's the way you are doing it, or writes questions to satisfy the test plan, as was done, I understand, in this case.

The test plan includes an awareness of current developments in the Human Resources Administration, supervisory skills, vocabulary, reading skills, arithmetic skills, various components that were created by clustering the tasks, and that is not different from other tests on which I have worked.

THE COURT: In other words, you don't do automobile mechanics in this job or paint murals, so you can at lease define by exclusion.

THE WITNESS: Right.

Q Did you find that the test follows the test plan, the actual examination?

A As I indicated, I am not an expert on content, but there were some areas it was evident that the questions related to particular parts of the test plan, such things as the reading and the vocabulary. Someone who is not a content expert could identify the arithmetic and the graph interpretation things. The things that relate to supervision are within my own experience and I recognized items in that category. Things having to do with current developments could be quite easily identified in terms of the content of the questions.

Q Isn't it as a practical matter true that the entire examination is a test of reading comprehension?

A One couldn't answer the questions if one couldn't read them, but one would assume that anyone trying to take this examination would be able to read the questions. The parts that are specifically reading comprehension relate to the way one interprets those two major paragraphs and five questions based on each in terms of the meaning of individual words within a certain context and the interpretation of the total paragraph by means of identifying a possible title for the paragraph. It's a typical reading-comprehension-

type question.

Q You also indicated in your direct, as I recall, that they were fairly easy; at least as far as the level of reading comprehension they tested, is that correct?

A I don't believe I said that, but they were not among the most difficult questions.

Q Were there, in your opinion, questions on the examination outside of those particular five that related to reading comprehension which were in fact more difficult to read than that passage -- more difficult to read and understand?

A There I suppose were individual questions that were harder to read than others, but the reading level did not strike me as being an extraordinary aspect of the test. The content seemed to be quite evident what the questions were asking for.

THE COURT: How do you judge difficulty of reading? Is that primarily a question of the -- how can I put it -- the rarity of the nature of the words that are used, the complexity of the words?

THE WITNESS: There are technical ways of doing this in which one determines the number of words in a passage and the number of syllables and the number of syllables

between periods so that the length of sentences and lengths of words within sentences and lengths of sentences within passages are all weighted in a mathematical formula to determine reading level. I did not analyze it on that basis.

Q To your knowledge, based on your examination of the job audit, your conversations with Mr. Rosenberg, are you able to determine what level of reading ability is required to successfully perform the job of a human resources specialist?

A Not from precise terms but from the job analysis and my conversations with Mr. Rosenberg it would appear that the people holding these positions would need to be able to read and understand the various communication distributed within the administration and in many of the instances would need to be able to read contracts or interpret technical legal materials that relate to the functions they are performing. Not in all, but again, because these are very varied activities, in many.

Q Was there any effort that you are aware of to do the kind of analysis that you have mentioned of word and syllable count to determine the level of difficulty of the materials that a supervising HRS has to

read?

A I did not inquire into that. I have no knowledge.

Q As far as you know, it wasn't done one way or the other, you just simply don't know?

A I don't know one way or the other. I have not asked that question.

Q Are you aware of whether or not the test writer subjected the test items to an analysis to determine -- of that nature to determine the difficulty of reading the test items?

A I am not aware of whether she did or not.

Q I don't recall if you mentioned whether or not you had any direct conversations with Mrs. Willingham?

A I did. I met with her on two occasions.

THE COURT: What was the substance of your discussions with her?

THE WITNESS: In the first instance, she was present in my first meeting with Ms. Omansky where I was asked if I would review the tests, and in the second instance it was after I had reviewed the tests when I talked with her about sources of test questions and procedures that she followed and raised questions with her that had occurred to me as I reviewed the tests.

Q Going back to the field audit, you indicated

that you, to some degree at least, evaluated Mr. Rosenberg's ability to perform that particular task well on the basis of knowing his past experience in doing desk audits and otherwise examining the functions in certain jobs. Is that a correct characterization?

A Essentially.

Q Is there, to your knowledge, a difference between the type of an audit that is done for the purpose of classification, salary structure, and matters of that nature, and the type of job analysis which is done specifically for the purpose of constructing an examination?

A There may be and there may not be. I have functions and situations where the audit done for the classification served as the outline for the test, and I have functions and situations where the specific analysis of the components of the job was done because a test was to be developed for it.

Q Is there, to your knowledge, any professional recognition of a distinction between those two tasks?

A In this very specialized area there may frequently be distinctions between them but they may be combined. There are a variety of patterns that would be followed.

Q But you yourself have never done a job analysis for any purpose?

A That's correct.

THE COURT: I take it you don't mean you flip a coin as to whether you use one or two but there are some situations in which it is appropriate to do both audits at once and some that's not appropriate.

THE WITNESS: Right.

Q If that is correct,then you are talking about two different things. Is there a difference between them or is there not?

A I wouldn't say that it is inappropriate to base the test outline on the desk audit, just categorically inappropriate, but in many instances there has been no desk audit when one determines that a test is to be constructed in relation to a job in whichcase you go in and compile the answer.

THE COURT: I suppose you missed a desk audit at one time which has become somewhat out of date because thecontent of the job has changed, or something like that. In any event, you are satisfied that in this particular case it was appropriate to make the kind of audit which Mr. Rosenberg made, which was not a desk audit?

THE WITNESS: That's right.

THE COURT: And that he was competent to make it?

THE WITNESS: Yes.

BY MR. MINTZ:

Q You have indicated that you became aware through the document itself and through conversations with Mr. Rosenberg had direct contact with four persons holding the position of supervising human resources specialist, which you indicated was almost 50 per cent of those permanently appointed. You are aware that it is a substantially smaller percentage than those actually performing the task of a supervising HRS?

A I indicated that, yes.

Q When you have a job of this nature, which has a great many facets to it, where one person with the same title may be doing very different work than someone else, are there problems when you meet only a very small percentage of those people? Might you not be failing to observe certain very important tasks in the job?

A You might be, but I felt that the fact Mr. Rosenberg also met with others who supervised the work of the permanent sup-HRSs to check out what additional tasks they performed, and since the city has a policy

that the analyses are based on permanence, this was an entirely consistent and not a very surprising practice. He gathered the information by talking with these superiors about the variety of tasks that are likely to be involved.

Q If there were no such policy would it have been better, in your opinion, for him to have spoken to 15 or 20 sup-HRSs?

MS. OMANSKY: I object to the question.

THE COURT: No, I think that is a proper question. I recognize that we have to deal with the facts that we have to deal with, but the question is whether the product that was produced by that situation is up to the best professional standards or not, or at least adequate professional standards.

Do you understand the question?

THE WITNESS: Yes.

A It might have been desirable to have had a larger sampling of the total gamut of the types of positions that are circumscribed by this title. I have to say, though, there is a rationale for limiting it to permanents because those are the people who are not going to be challenging it in terms of the examination, but there is also a rationale for including it.

THE COURT: We all understand that, but supposing, for example, there had only been one permanent, would you have felt that that would have been satisfactory?

THE WITNESS: I get your point. You are right.

Q Going further, is there, to your knowledge, an accepted definition in the field of psychmetrics of a critical task or a critical aspect of work?

A A task which, if incorrectly performed or for which the person is incompetent, would constitute really an inability to perform a job.

Q And, similarly, a critical skill would be one which, if the person lacks it, would render him unfit to do the job?

A Yes.

Q Do you find in Mr. Rosenberg's field audit report any identification of any of the knowledges and skills that he outlines as being critical, major importance, minor importance, or any way quantified?

A Not in terms of criticality. There are two methods by which these are typically classified, and one is in terms of criticality and another is in terms of frequency, and I discussed this with Mr. Rosenberg and

the method that was used here was to classify the tasks in terms of frequency in which they were identified by the incumbents and the supervisory personnel who relate to the incumbents, and that is an acceptable approach.

Q Do you know how this determination of frequency was made?

A I really don't feel that I can speak to it. It was based on the -- I have the impression it was based on the numbers of tasks that were cited in the one paragraph at the top of the second page that related to specific ones of the categories in the knowledges and skills specified at the bottom of the page, so that certain things were very frequently related to category 1 and category 1 then received, I believe it is, 20 per cent of the weight of the test. It was done in terms of that sort of frequency rather than criticality.

It is difficult in this type of job to assign a criticality weight. It might be easier in one of the health occupations where failure to perform correctly might result in the demise of the patient, but in social services they don't usually believe what we are doing is that critical to people, I guess.

Q Nonetheless there are critical skills. If a person was illiterate couldn't we all reasonably assume

he doesn't perform this job?

A I would think.

Q That is a fairly obvious one. Isn't it possible at least that there are others, some less obvious but which could be identified?

A I would think it would be difficult on a general examination for a title of this sort to arrive at other critical tasks besides illiteracy that would cut across the variety of activities under this title.

THE COURT: I don't know if you would call it an activity. You could call it a quality of personality, but what about the ability to deal with people? Is that of special importance in this job as compared, for example, to being a researcher in a library, where whether you can get alongwith people might not be very important.

THE WITNESS: I am glad they didn't try to test for that. It is one of our more difficult problems which has not been very effectively solved.

Q Do you agree with his Honor's proposition that that ability is critical to performing this job?

A I would think that ability to deal with people would be very important, yes.

Q And yet it is something which can't practically

be tested for, or at least not very easily?

A One can draw inferences in terms of people's knowledge about such things as supervision, things of this sort, but if a person knows about those things one can't be sure they will always do them, and probably vice versa.

Q That brings up a very important point. If a person in fact knows -- take the example of the horrible question -- that morale and productivity are essentially unrelated, will that knowledge make him a better supervisor, or have you any way of knowing whether that knowledge will make him a better supervisor than someone who doesn't have it?

A No, I would have no way of knowing whether it would make him a better supervisor.

I think, if I may point out, individual questions on a test of this sort may not reveal any particular informationabout the examinee as an individual or examinees as a group. It is the constellation of all of the questions taken together. And this is true of tests in general. The individual's performance on any one question really is rather an irrelevancy. It is the clustering of responses, the patterns that emerge from responses collectively, that are indicative of the in-

dividual's skils and knowledges and abilities.

Q Is it not true that people may have a great deal of a particular knowledge but not be able to apply it effectively?

A Some people, yes.

Q In this example, is it possible that someone might know a good deal about the principles of supervision as allegedly tested for in the first 25 questions but in fact when they are put in the position of supervising people for any number of reasons, other reasons, might not be able to apply them and do a very effective job of supervision?

A Some people might.

Q Is it similarly possible that someone may lack the knowledge to correctly answer these questions but because of innate personal abilities may be excellent or very good or at least competent at the task of working with subordinates, delegating responsibility and the other things a supervisor must effectively do?

A There may be such individuals, yes.

Q Again to take question 11 as an example, when you find on your item analysis that kind of pattern that only 10 per cent of the top third of your test-takers got the correct answer, even though you know it is

a correct answer, would it be considered good practice to remove that question from your test either by crediting everyone with the correct answer or by simply removing the question and not counting it one way or the other towards the grade?

A I think it depends on a great many other factors and the particular situation.

I have worked in test situations where an item, for one reason or another, became defective or something was identified, something was wrong with it, where it was determined that credit would be given to everyone on the question. But generally that has been where it turned out there was no right answer or that there were multiple right answers, as a consequence of which everyone was given credit for it.

But in a situation like this, where it was simply a difficult question, where there is a right answer I wouldn't generally think that the situations in which I have worked such a question would be removed from a test or everyone given credit for it. It happens to be a difficult question, and the questions range in difficulty from that level up to 100 per cent getting it right.

Q Yes, but this one is so difficult that the cor-

rect answers were less than one would expect from chance. If people had to guess randomly you would expect 25 per cent of them to get it correct. Even in that circumstance you could see no reason for removing this question from consideration towards the score?

A I think it would have to depend on a very convincing rationale for doing it, but in general I would not immediately suggest removing it from the exam.

Q The item analysis also shows us that in several instances on the top group of test-takers, though there were no others where less than 25 got the correct answer, there were somewhere a larger number of that top group selected one of the other three alternatives than the so-called correct one. Did you observe that in examining it?

A I recall there were a few such items.

Q What does that tell you about the item, when there are -- when even your top group of test-takers, most of them get a wrong answer, not just scattered among the other three but a particular wrong answer?

A There is some fairly commonly held misconception even among those who are the better candidates on the test.

I might say that the type of document to

which you are referring and which we have been calling an item analysis, and which is in effect called an item analysis in many quarters, is not what is technically known as an item analysis. This is more usually called an item tally or a frequency count, something of that sort, because it indicates only the number of people who chose each of the particular responses.

The usual item analysis gives you several more statistics for each item than this does, and from that one might be able to make some of the inferences that I think you are pursuing, but the data available doesn't provide that information.

For example, in many of the item analyses that the testing concerns now develop you receive information that indicates the average score on the total test for those people who selected each of the four answers, so that you know whether in fact this relationship holds that they were the better people throughout.

You also in most item analyses receive information on either the biserial correlation or the point biserial correlation between each of the options and the total score. This also gives you some more information. You can only guess at it from this.

Q These studies were not done in this instance,

to your knowledge?

A Apparently the computer is not programed here to do that.

Q They are professionally recognized studies which are done elsewhere?

A In organizations that make test development their business, yes.

Q Would such an analysis enable you to determine that a particular question was in fact a negative predictor and that you would get better results if you took another right answer or took two right answers as far as the ability to use your test as a predictive device?

A What would usually tell me is that I need to check with either resource materials or resource people to be certain that there is consensus in a content validation sense that the keyed answer is in fact the correct answer and to be able to document that, and it would seldom suggest that something other than the keyed answer should be keyed.

One of the purposes of an item analysis is to confirm to you that you have keyed the examination correctly, but if you find that a large number of people show something other than what you had keyed it doesn't mean you should change your key or what they thought was right,

you merely have to satisfy yourself what you keyed as the correct answer is in fact supported by expert opinion, be it written or consultant opinion.

Q That confuses me about what the purpose of the test is. As I understand it, the purpose of the test is to determine whether people can successfully perform the job, not to determine whether they in fact have consulted the right textbooks and therefore have come up with the technically correct answers.

Doesn't the procedure you are suggesting put something of a reversal on that?

A I don't think so. It is a matter of having obtained these so-called item analysis statistics, verifying with whatever resources were used in developing the tests that the test was in fact correctly keyed, and I said in my original testimony that the examination is devised in such a way that the items will be of widely varying difficulty so that you will come out with a list, so that not everyone will fall within five points of each other, because otherwise there is no ranking and the city has no way of making a selection.

So the questions are deliberately, they must be for any examination of this sort, varying in difficulty from some that are very easy to more difficult.

THE COURT: May I ask you whether in the profession there are any recognized critical percentages or criteria of one kind or another of the following nature: That is, that you have an exam in which out of the 80 questions as here, let's say, if it were the case, that 20 per cent were incorrectly answered, or 30 per cent, or any given percentage were incorrectly answered by the most successful group, you automatically conclude that the test as a whole is suspect? Do I make my question clear?

THE WITNESS: I don't know that I could specify a number, but certainly one expects to find a minimum of the questions negatively discriminating, such that the people who get the better scores tend to get an item wrong, and in my experience usually on the first try out of the test if you have 5 to 10 per cent of the questions showing this type of questionable statistics, either negative or very low correlation between performance on the item and performance on the test, you would review the question to see if there was something wrong with the question, but you might still keep it once reviewing it because it was judged tobe useful information and the answer that was keyed was the right answer.

THE COURT: My question isn't directed to one's

approach to the salvageability,if you want to call it that, of a particular question but to the feel that you get about the test as a whole.

In applying the principles that you have just discussed, which seem to me to be applicable to the judgment of the test as a whole, as well as a particular question, what do you come away from your analysis of this test believing?

THE WITNESS: I believe it does a better than average job, especially in view of the fact the questions can't be tried out before they are administered. There are a minimum of questions that show these low frequencies.

THE COURT: That's what I want to know.

BY MR. MINTZ:

Q You stated that the questions vary widely in difficulty, and as I understood you the purpose of that appears to be that you therefore have a widely spaced rank list so that the people in the city can select people. Is that the only purpose of varying your questions in difficulty?

A It is a primary purpose.

Q Well, then, if instead of a rank list your goal was to simply produce a pass-fail list and everybody

above a certain level would be hired and everybody below would not, there would be no reason to have questions of widely varying difficulty?

A You would still have to have questions of varying difficulty or you wouldn't be able to separate people. If they were all of the same difficulty you wouldn't end up with a passing point, because what difficulty of level tells you is the proportion of people that will get it right. If they are all at the same difficulty level, and say you set 70 per cent as the difficulty level, you would end up with 70 per cent as the most frequent score. Everybody would be at that score and you wouldn't have any assistance in making your decision.

Q I have difficulty in understanding that. I don't know if you are familiar with bar examinations --

A I am not.

Q -- but those are pass-fail. It is my experience, having taken three, and hopefully the court will take judicial notice, that the questions are more or less comparable --

THE COURT: Three in the same state or different states?

MR. MINTZ: Three in different states.

I managed to get admitted to three different bars on examination. Each one only once.

Q Your candidates are not equal, so you if you have 80 questions of as nearly equal difficulty as possible, but you have a thousand candidates of widely varying ability, you are going to get some level who pass and some level who fail, wouldn't you.

A Yes. I might say I don't know how they establish the pass-fail point for the bar exam but I am familiar with how they establish the pass-fail point on many other occupational licensing exams, and it is usually in terms of setting a point that will eliminate a certain percentage.

THE COURT: I don't think that is true of bar exams. In New York, anyway.

MR. MINTZ: We haven't been able to find that out.

THE COURT: I am not sure whether these questions go to the heart of the matter that we have, because the question really isn't, it seems to me, whether there are some difficult questions or some simple questions but whether the test as a whole fairly examines the knowledge necessary to the job and whether it is job-related. That is an observation only.

MR. MINTZ: My next question may bring out what I am trying to reach here.

BY MR. MINTZ:

Q You are aware, as I understand it, that the two tests here in issue were very similar, only ten questions differed?

A Yes, sir.

Q To my knowledge, I gather it is true that there was no item analysis done on the other test, 1631?

A I am not aware of any.

Q It was not supplied to the plaintiffs either, and it appears not to exist.

Are you also aware that in the nature of the circumstances here everyone who passed the promotional test would in fact, presuming they also passed the oral, would in fact be appointed to a permanent position as a supervising human resources specialist?

A I do not know that.

Q Are you able to say with any degree of certainty that anyone who couldn't correctly answer 56 questions on either of these tests, but particularly on 1631, the promotional examination, would be unable to perform the job of the supervising human resources specialist?

A I am not able to say that. Testing is an im-

perfect science, and on any test that we can devise there will be people who might exceed a passing point and fail to do an adequate job, and there might be people who are doing an adequate job who would fail to reach a passing point.

Tests have -- we have measures of test reliability and validity that get at some of these things and by the use of the reliability measures we have some estimate of the degree of error in our test scores, but for the various purposes for which tests are used passing points are established and we know that this does disservice in both directions. We know that on subsequent occasions the same individuals might have higher or lower scores.

Q Are you aware of the fact that the percentage of those passing the promotional exam, for which only people who were permanently appointed to the next lower level job were eligible, was lower than that for the open competitive which was eligible to anyone meeting generalized qualifications?

A No, I am not.

Q Does that knowledge tell you anything about these examinations, when you know the people within the agency doing at least a related job at the next lower

level could not do as well on that average as people from outside?

A Could you back up and clarify that for me again? I am sorry.

Q The circumstances here show thatthe promotional examination, the percentage of those passing was lower than the percentage of those passing the open competitive examinations.

The facts in evidence also show that only people who were permanent appointees to the rank of senior HRS, which is the next lower rank, could take the promotional. Many of those people who were such permanent appointees were in fact provisional supervising HRSs.

THE COURT: So that as I understand it, in other words, there were more people who were actually on the job, a higher percentage of those who were actually on the job, who flunked their test than the people who were not on the job flunked theirs.

MR. MINTZ: That is the essence of it.

MS. OMANSKY: That is not in evidence because we don't know, really, who took the open competitive test. For example, we know many of -- I don't know how many of the plaintiffs took the open competitive test,

but you can't make the assumption. I have to object to that.

THE COURT: I will sustain the objection to the extent that unless we do develop something to make that assumption more solidly founded I will have to disregard any answer to the question. But if that were true would it have any significance in your mind as to the validity of the tests?

THE WITNESS: Not as an isolated datum. I would need to know more about, you know, the people and something about the jobs, but not just as a datum alone.

MR. MINTZ: I would like to point out to the court that that fact is indeed in evidence through Plaintiffs' Exhibit 1 where all of those who are present employees of HRA are identified by race, specifically that appears on Exhibit 1C, and a count of those who are identified by race shows it is approximately --

THE COURT: You don't need to go on at length about that, Mr. Mintz, because the witness has indicated that that fact alone, even if true, would not be significant in her view. If it becomes significant in another connection I am perfectly open to your demonstrating that.

Q What is a concurrent validity study?

A A study which correlates performance on a test with some quantitative, currently gathered criterion, such as a measure of performance, possibly a score on a rating scale, something of that sort, that was gathered at the same time as the test was centered, that would be concurrent.

Q Are you aware that a large number of people who were performing this job as provisionals vailed the examination?

A I don't know how many. I actually have no data on the number that failed.

THE COURT: Can you be specific about that? Does anybody know offhand?

MR. MINTZ: I have some difficulty with that. Not at my fingertips.

THE COURT: I suppose the number would be of significance, or the percentage.

MR. MINTZ: We do know that two-thirds of those who took the promotional examination failed.

THE COURT: Two thirds of the total number?

MR. MINTZ: Of the total number, yes. Forty-three passed and 96 failed. That is very close to a two-thirds figure.

I think the evidence -- well, it is clear that

all of them were permanent seniors. The evidence indicates that a substantial number of them were provisional sups.

THE COURT: I am not challenging you, but if the witness needs the figure to answer, she can't answer without it.

Of the 96 that failed, let's assume 60 were provisional. Would that mean anything?

THE WITNESS: What's the question?

BY MR. MINTZ:

Q My question simply was were you aware of that?

A No.

Q Were you aware that the nature of provisional appointments under the civil service laws of the city and state were such that a provisional serves at the pleasure of his employer and could be dismissed at any time, there is no tenure in the job for competency or any other reason?

A I have become aware of that during the past couple of weeks, yes.

Q Does it then suggest to you that in fact the giving of examination 1631 was a rough concurrent validity study?

A You skipped a step for me somewhere. I am sorry.

Q Well, the test was given to many people presently holding the job as provisionals?

A Yes, but what was collected as the criterion against which the test was to be concurrently validated? You have to come out with a validity coefficient to have concurrent validity. It isn't just armchair judgment that these people, just because they are in the job, ipso facto that is a criterion for concurrent validation. You have to come out with a statistic.

Q It wouldn't be sufficient for you to know that they were all performing satisfactorily, at least by virtue of the fact that they had not been dismissed?

A From my experience in management and supervision, and from working with various rating forms, it is typical that people get satisfactory ratings, as I have seen the forms that are used in municipal rating. The choice is between satisfactory and unsatisfactory, and the person who is unsatisfactory wouldn't be there, so that satisfactory is a very global criterion, and undoubtedly covers a very wide range of abilities and skills and knowledges in terms of performance. There are some people who are just barely satisfactory and there are some people who

are absolutely splendidly superb and you wish you had thousands of them. And there are people all the way between and most people are in between.

What you need in order to come out with a validity coefficient is some kind of distribution among the ratings as you have some kind of distribution across the scores, and if you just have lots of people with the same rating you don't get any kind of a correlation because you have to have some variability to get a correlation.

Q Isn't it possible to construct some sort of meaningful correlation simply with knowing you have a group of people most of whom we have good reason to believe were performing satisfactorily but which a test says are incompetent to perform the job? We are not talking about the range, we are simply talking about this measure says they are competent, this measure says they are incompetent.

A Is that in fact, if I may, what the Civil Service claims, that by failing that test it means they are incompetent? What it is doing is setting up a classification list in terms of ranges of performance, and that people who know more than 70 per cent of this will qualify to be on these lists.

Now, as I have said, tests are imperfect and some of the people who got 69 might have gotten 71 another time. We would not expect that people who got 60 would get 80 another time. Tests are not usually that unreliable. But occasionally an individual, for various reasons, might change his performance remarkably.

THE COURT: Are you implying also that someone who got 60, let's say, might perform satisfactorily -- I don't mean somebody in the sense there can always be an exception, but is it quite possible somebody who got a 60 might perform satisfactorily, but since one of the chief functions of civil service examinations is to spread out people in accordance with their level of success on the exam so you can choose from them, that merely flunking the exam is not inconsistent with the possibility of doing the job satisfactorily?

THE WITNESS: Exactly.

THE COURT: It just means somebody else is likely to do it more satisfactorily?

THE WITNESS: In most instances.

THE COURT: At least it provides a number of people that the Civil Service can obviously choose as having been found in as honest and arm's length a way as

possible?

THE WITNESS: Right. And one of the reasons for using paper-and-pencil tests with groups as large as you are dealing with here is that it facilitates screening large numbers of paper. The rationale for using this kind of a test in 1972, when the other type of test was used in the earlier instance, would seem to me to be entirely logical.

In the earlier instance there were smaller numbers to deal with and you could do that sort of thing. But where you need to screen large numbers fairly quickly to establish lists a paper-and-pencil test facilitates doing that, and some people have difficulty with paper-and-pencil tests, some people have difficulty with interviews. It is the fairest way for dealing with the largest number, but there are problems.

THE COURT: Putting aside the question of some people, by which you suggest individuals --

THE WITNESS: That's right.

THE COURT: -- has your experience led you to believe that there is any serious question as to whether paper-and-pencil tests are not only more difficult for some people but for some groups of people, culturally deprived groups or --

THE WITNESS: They may be for, again, some groups within the culturally deprived, and one needs to look at them as individuals as well, because they, too, show wide variations and individual differences, and there are large groups of them that don't have difficulty with paper-and-pencil tests, and there are large numbers that do, just as with the school situation and law school and the bar exam and so on. In all of these things you can find your parallels.

BY MR. MINTZ:

Q Do I correctly understand from the statement you have just made that if there were an ability here to put more time and perhaps even money into the selection procedure some better selection device than a multiple choice test might be found?

MS. OMANSKY: I object to the question. I don't think there is any premise for that at all.

THE COURT: There may or may not have been. Mr. Mintz is asking whether there was. He is asking whether that is what Dr. Katzell meant by something she said.

MR. MINTZ: That is correct.

THE COURT: I think he is entitled to that much clarification.

A I don't know that I would say it is better. Frequently when you are dealing with small numbers of people it is easier, more economical and efficient to evaluate training and ex perience, some of these things, in an interview process or oral exam or some other like device than it is to go through all the work of developing an objective examination, which is a lot of hard work, especially to come out with a good one.

Then, on the other hand, when you are dealing with large numbers of people one of the ways of facilitating handling them is to use paper-and-pencil tests that can be objectively scored. So that in the books when they set these up in parallel tables these are the things that would be opposite each other in the tables, the advantages and disadvantages of oral exams, essay exams and objective exams, and which type of group it might most conveniently be used with.

Q Getting back to the point we were discussing before, though, there is another factor you may or may not be aware of. We have here a provision of law, I believe state law, which requires that persons eligible for promotion be given an absolutely preference over persons who are from the outside in this situation. That is, everyone who passed all parts of 1631 would

get the job before anyone who passed 2013. Do you understand that fact?

A I am hearing it for the first time.

Q In other words, what would in fact happen here is the person who got a bare 70 on the promotion test would be appointed ahead of the person who got conceivably 100 per cent, if there was such a person, on the open competitive.

You were not aware of this either?

A No.

Q Does that knowledge cause you to change in any way your prevoius answer that when what you are aiming at is to rank people and to screen out the less qualified, if not perhaps the unqualified -- does this set of circumstances change that in any way?

MS. OMANSKY: I am going to object to the question on the following grounds:

In the first place, there is no challenge, I think, to the provision of state law which says that people get appointed first from a promotional list. That obviously sets a different social policy, and I don't think that that goes to the issue of job-relatedness, or to the construction of a test, and Dr. Katzell is not here to evaluate social policies and it seems to

me therefore the question is irrelevant.

THE COURT: I will sustain the objection to the question much as I would be interested in the answer. We are not here to decide how the system works but whether it works.

Now, as to how the tests are to be created, whether there ought to be such policy, is not in issue, only whether the policies that there are produce legal results or not.

MR. MINTZ: Would the court hear plaintiffs' point of view on that?

THE COURT: Yes.

MR. MINTZ: Our real concern here is we have had an absolute cutoff to two-thirds of the people who took the promotional examination, many of which are the provisionals and the people we represent. We feel that that kind of absolute judgment, even if we assume the test is job-related --

THE COURT: You mean for this discussion

MR. MINTZ: -- if you have a policy the promotion people come first and you are saying all the people below 70 on the promotion exam are underqualified, they will never get a chance to get the job, you are just not saying that they are less qualified.

t2/1 pm

THE COURT: What would your question of this witness be?

MR. MINTZ: My question was whether knowledge of the fact -- what in fact is happening is that relatively low scores on the promotional exam get the job before the high scores on the open competitive, whether that changes her view of the value of the cutoff score. She seemed to suggest previously that the cutoff score was simply a helpful test; it was allowing you to cutoff the last qualified.

THE COURT: I don't think such question about the value of the cutoff score would be proper. I think we would be extending the law if we went into, and I think we would be extending boundaries of legal discussion if we went into what I am about to talk about, which is whether the policies in question have discriminatory results, but I don't think that Dr. Katzell pretends to have any right to an opinion on that particular subject.

You may be free to argue, for example, that a T and E exam would have been better here and would have had less discriminatory results, or what a cutoff of 70 in the situation thatyou are describing has produced or will produce, but that is not your field of expertise, or rather, not Dr. Katzell's, and it is for that reason that I will sustain the objection.

I have recognized, although you may be free to argue that, that although that has not been a subject which has been decided by the courts, that does not mean it can't be presented by a lawyer arguing his case.

MR. MINTZ: With due respect, there are questions which deal with the impact of a cutoff score as a discriminatory device.

THE COURT: All right.

BY MR. MINTZ:

Q Has your experience in this field of psychometrics brought to your attention any material relating to the discriminatory impact of written examinations, speaking particularly of racial and ethnic discriminations?

A In some settings, yes.

Q Pardon me?

A In some settings, yes, not categorically.

Q Well, what are those settings, and where do you find this information?

A Well, some of the Supreme Court decisions that have dealt with the Griggs Duke Power case dealt with testing situations and unfairness.

There have been studies that were supported by the Ford Foundation and conducted at New York University that dealt with fairness and validity in testing as it

applied to minority groups.

And there is a fair amount appearing in psychological literature. One can hardly avoid it. But there are situations where tests are being demonstrated to be fair and being validly used.

So this is why I said one cannot categorically say that a test, ipso facto, is discriminating against minority groups.

Q Are you aware of the fact that the evidence in this case does show that the performance of black candidates, at least insofar as the scores achieved, was, on a percentage basis, lower than that of white candidates in these examinations?

A I don't know what the percentages were, but I inferred, since the case was in existence, that that was the situation.

Q And similarly with regard to Hispanic and white candidates?

A Yes.

Q Now, are you aware of any means available to the test constructor to attempt to minimize any such racial or ethnic impact?

THE COURT: You mean the impact which occurs merely because you have a written test?

MR. MINTZ: Well, either merely or a particular written test.

THE COURT: Are you talking about how to minimize the impact within a written test?

MR. MINTZ: Yes.

THE COURT: Once you decide to give one, how do you go about it?

MR. MINTZ: Yes, my question at this point is directed to that.

A Well, one way, of course, is in terms of content validation. having the test reviewed by people, or have people work on it, contribute the items, and so on, to get familiar with the content and judge, in their expertise, that this content is relevant to the job.

In that case it can usually be inferred, although the EOC, I understand, leans toward criterion related validity rather than content validity, but for many tests it is acceptable, and they accept it, that experts validate that the content is relevant to the job, and on that basis accept the content as being suitable for inclusion in the test.

Now, beyond that one may have special reviewers in some situations where you would have people representing various ethnic or educational levels to review a test in terms of its difficulty for them to read, but this could also

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be applied to any test.

One might consult consultants for a variety of expertise in this skill, but it is certainly not always done.

Q Well, assuming that you have a good determination of the necessary content, are there ways of eliciting familiarity with that content which may be more or less discriminatory?

A I am sure there areways that would be more or less discriminatory.

THE COURT: Than each other?

THE WITNESS: Right.

THE COURT: Some ways would be more and some ways would be less?

THE WITNESS: Right.

BY MR. MINTZ:

Q For example, assuming feasibility, if you could place someone in a simulated job situation and judge their performance in that, would you have any reason to believe that that would be more or less discriminatory than having them answer written questions relating to the performance in that job situation?

A I think I would be inclined to lean toward the written questions in a situation like that.

THE COURT: As being less likely to produce discrimination?

THE WITNESS: That is right, because one of the values of objective type tests, of which this is an example, is that everyone is exposed to the same situation, and their responses are judged by the same criteria, namely, an objective key, and either they have got it or they haven't got it; whereas if you have judges rating people's performance in an observed setting, and you have all sorts of subjective factors entering into it, it might be that the ethnicity of the rater influences the effect of his rating on the person being observed. There are many more variables that it is impossible to control, in my judgment, in that observed behavior setting than in this.

Also in the observed behavior setting you are very limited in the numbers of kinds of things you can sample. Here in a relatively short period of time you can take 80 samples of a person's knowledge, and this is another one of the advantages of objective type questions.

Q Did I understand you to say that it is impossible to objectivize the performance evaluation?

A Well, you can't be certain that it is totally objective. You can train your raters; you can provide them with an objective rating form, and you can still have some-

thing about the person they are observing create a "halo effect" so that they rate in one way or another on the basis of some generalized impression, and that is what it means.

THE COURT: I think that Dr. Katzell deserves a little rest for the time being, and if she does not, I do.

We will take a 10-minute recess.

(Recess.)

THE COURT: Do you have any other witnesses today?

MS. OMANSKY: Yes.

MR.MINTZ: I have only two or three more questions.

THE COURT: Good.

BY MR. MINTZ:

Q Do you have a copy of the job analysis with you, Defendants' Exhibit F?

A This is the memorandum dated February 4th?

Q That is correct.

A Yes.

Q Is there anything in there that shows --

THE COURT: This is the job analysis, not the item analysis?

MR. MINTZ: Yes, what is technically called the field audit report, Defendants' Exhibit F.

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THE COURT: Yes I remember.

Q Is there anything in there which shows how specialized the position of supervising human resources specialist may be; that is, how unique one person's job might be from that of another?

A In this I would say no

Q In other words, it stays only with the commonality of the positions and not the specialized functions?

A Well, in the task at the top of page 2 I inferred, perhaps incorrectly, but I inferred from the variety of tasks specified there, that these must be drawn from a variety of different positions, because it seemed to me unlikely, and also recognizing the parenthetical labels that go with the Title, that this would represent different tasks performed in different parentheticals.

Not all Supervising HRS must do all these things, but these are tasks that are done by Supervising HRS.

Q You don't infer from this that all people in this title will do each of these tasks?

A By no means.

Q Is there anything in this which indicates how frequently or commonly it occurs that the people will move from one speciality or one agency to another?

A Not in this.

Q Is that, in your opinion, something important for the test developer to know?

A How frequently? No.

Q Well, you said that you understand from this, and I gather, at least, that some Supervising HRSs do only some of these tasks, and yet they are tested on what purport to be the knowledge and skills required to do all of these tasks.

If, in fact, people are slotted to particular jobs where they do two thirds of the test but not the other third, but they are tested on their skills in all of them, would that affect the validity of the examination?

A No. What are specified here are the knowledges and skills that are basic to doing any of these tasks, so that in order to do virtually all of them one has to be able to read and comprehend what one reads.

Therefore, one of the categories here is skill in language usage, including vocabulary and reading comprehension.

So that is one of the knowledges and skills that is required in order to perform, whether they are going to be develop TV materials, or writing a newsletter, or what, you have to have some verbal skills, and these are getting at those.

In all of them, apparently, one has to have familiarity with developments in the programs, so that is one of the categories of knowledges and skills.

Q Developments in the programs, you say?

A Yes, category 2, familiarity with developments and categories in the programs.

Q You were here on Monday when the plaintiffs testified, I believe?

A Yes, I was.

Q You heard descriptions of their duties, Mr. Jackson, for instance, who works in Personnel. Would you expect that in order to successfully do his job as a personnel coordinator, he would have to know, for instance, No. 1, the knowledge or functions of public and private human service agencies beyond his own agency?

A That is not what I have here at No. 1.

Q Looking at the bottom, the list of knowledge and skills required.

A Responsibilities of HRA Central and constituent agencies.

MS. OMANSKY: It is the different between the promotional and the Sup.

MR.MINTZ: That is the first I heard there was any distinction.

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This is very interesting because this is not the exhibit on file, and this is the first time I have seen this document.

MS. OMANSKY: I think, Mr. Mintz, you introduced in evidence --

THE WITNESS: Well, apparently the only one that is different is the one that Mr. Mintz cited.

THE COURT: You can ask the question in any event, Mr. Mintz. Just read whatever it is.

You are actually reading from an exhibit, is that right?

MR. MINTZ: Yes, I am readingfrom a photocopy of what I introduced. I have the actual one here.

THE COURT: I am not challenging it. Whether it is in evidence or not, you can ask the question. So if you just want to ask Dr. Katzell whether she thinks X is relevant to Mr. Jackson's job --

MR. MINTZ: I am taken aback by discovering at this point in the trial for the first time that there was apparently a different field audit for the promotion and open competitive exams.

MS. OMANSKY: No, I think I can explain it. There is one category -- there is another document; in fact, I had it yesterday; I believe everything else would

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be the same except for Category 1, and I would be perfectly happy to introduce the other one into evidence.

MR. MINTZ: I think appropriately it should be introduced as F-1.

THE COURT: Let's call it F-1. I don't pay any attention to who introduces the exhibits, anyway, but it would make it more logical if it is a similar number.

So we will mark it Defendants' Exhibit F-1 in evidence.

(Defendants' Exhibit F-1 was received in evidence.)

xx

THE COURT: How are you going to describe it?

MS. OMANSKY: There is a slight difference in the description of the subject at the top.

THE COURT: Let me see it, please.

(Exhibit handed to Court.)

THE COURT: For the record, Exhibit F says "Field Audit Report, Promotion to Supervising Human Resources Specialist, Examination No. 1631 and Open Competitive Examination," whereas F-1 does not include the words "and open examination."

All right, we have identified it so that we know what we are talking about.

THE WITNESS: To facilitate things, Mr. Mintz,

I do have the wording of the 2013, Section 1, because it is in the test plan in the way that you read it, functions of relevant public and private agencies.

I think that a person working in personnel functions would certainly need to be aware of the various agencies he was serving.

Q Well, Mr. Jackson is assigned to the Agency for Child Development, not to Central Management, and performs personal work for that agency, not for the entire realm of HRA.

Would your answer still be the same, that he needs to know about all the agencies of HRA?

A I would think he would have to have general knowledge of other agencies of HRA. He would need to perhaps know, in doing his job, about the agency in which he is working, but I don't think it would be inappropriate to expect him to know about the agencies in HRA.

THE COURT: That is primarily because some day he might be, for example, in Manpower Development.

If he never were to leave Child Development, would you still feel he would need to know anything about Manpower Development?

A I don't know exactly what all of his duties are in Personnel, but simply relating to the people in his agency,

I would think it would be helpful.

THE COURT: When you say "his agency," are you referring to the Child Development Agency?

A Yes, Child Development Agency, to know what goes on in the other agencies.

THE COURT: I take it Mr. Mintz is asking not whether he has to know what goes on in Child Development Agency but whether he has to know what goes on outside of the Child Development Agency in the Human Resources Administration; is that correct?

MR. MINTZ: That is correct.

THE WITNESS: Oh, I would think if he is dealing with personnel matters within the Child Development Agency, he would need to know what is going on in other agencies in HRA.

THE COURT: Why?

THE WITNESS: Because he is dealing with people who are dealing with those agencies.

THE COURT: All right.

THE WITNESS: Well, apparently many of these people, from some of the testimony I heard on Monday, they have to be aware of the other resources, and if he is relating to them, I think he would need some familiarity.

THE COURT: I suppose it is a fact that

everybody seems to agree that there is -- I won't say interchangeability, but a lot of movement from one agency to another, would mean that even if you are only a personnel man in one of them, it would be desirable for you to know about what happens in other agencies, so that if somebody comes from their to your agency you will be able to cope with it, so to speak.

THE WITNESS: It is also my understanding that the task analysis, part of it was approved by the Administration in terms of the categories as being appropriate.

t3

Q Similarly, did you hear Mr. Yourman testify this morning that -- I believe his figure was something in the nature of 35 per cent of Supervising HRS's in fact did not supervise?

Do you recall that?

A Yes.

THE COURT: He said 60 to 65 did, yes.

I am just explaining to the witness how he said it.

Q Would that in any way cause you to question an -xamination where such heavy weight is given to supervision, 25 questions out of 80, better than 30 per cent?

A I didn't understand it was that many, but in any case I again because of the mobility and the opportunity for transfer within the administration, since so many of the jobs do involve supervision, I think it is appropriate that a substantial part of the examination involve supervision.

There is none of the categories that is as high as 30 per cent. Cagegory 5 is 20 per cent, and that includes staff development, supervision and guidance.

Q That is true, but I believe that Mrs. Willingham testified that an examination of the tests would indicate those 25 questions are in fact very much related to supervision and staff development, although she suggests they

also relate to other areas.

A There are many of the questions in here that could be and probably are coded in more than one of the categories, and with 20 per cent -- if all 20 per cent of Category 5 was supervision that would be 16 questions out of 80. Is that right?

A Yes.

Q You do understand, I take it, from the testimony, since you don't suggest that you yourself have studied the job, that there is some movement of supervising HRS from one job to another. Do you know whether that type of movement in fact involves a considerable change in function or merely a change of location? For example, a person doing personnel with one agency might do personnel with Central office or personnel with another agency but wouldn't be put out as a coordinator of parent involvement, for example.

A I have no information on that.

Q You don't know one way or another?

A No.

Q Finally, do you have any judgment or opinion as to whether results on this test are in fact predictive of anything? Is a person's score on the test in fact predictive of anything?

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A I couldn't express an opinion on that score. There are no data allowing me to express whether it is predictive or not. You don't look at a test and guess its predictability. I would say it appears to have content validity, and that the method by which it was developed would support that [illegible]ention, but predictability has to be established by statistics.

Q So you don't know then whether someone who passes the test could do a better job than someone who fails or someone who gest a 90 could do a better job than someone who gets a 70?

A I don't.

MR. MINTZ: I have no further questions.

MS. OMANSKY: I would like to first address myself to Mr. Mintz' statement that other courts have given certain weight to the automatic cutoff scores.

I might add that other courts have also thrown out tests merely because they have not been predictively validated or concurrently validated and of course that is not the law in this circuit any more, and most of the testimony of course in prior cases attacked exams on the grouns that because they had been predictively validated therefore they were not proper tests.

However, that is just getting something off my

chest.

THE COURT: Were you getting off to me or to the witness?

MS. OMANSKY: To you.

THE COURT: Consider it gotten off.

REDIRECT EXAMINATION

BY MS. OMANSKY:

Q Dr. Katzell, I suppose any test that involves reading words is a reading comprehension test, I would imagine in a sense?

A In a sense.

Q You have to be able to read?

A If one cannot understand what one reads then one cannot answer the questions.

Q You mentioned a word and syllable count. Is that a customary procedure for examinations or is that a relatively rare procedure?

A To my knowledge, it is a relatively rare procedure. I was involved in only one instance where it was done and that had to be done with a test that was being developed at a very elementary level for nurse's aides, and we attempted to determine the reading level of that test.

In standardized testing practice I think it would be most typically done when one is developing reading tests

for use in public school settings where it is important to establish the reading level of the test.

Q You lost me.

You talked about some biserial something or other, and I wondered how fatal is it to a test constructor like the Department of Civil Service if they did not do a biserial something or other?

A Dr. Katzell, you are talking about the item analysis, and the item analysis cannot possibly be done until after the test is constructed, so that the lack of that does not affect the way in which the test was constructed. The statistics that are sometimes compiled in an item analysis are of use after the fact in looking at the results, and certainly one can get considerable information from the item tallies that we have here. The other information would add an ingredient.

Q I suppose that the item analysis might be particularly relevant if you were going to use the items again?

A That is right. That is when you would particularly want it.

Q Do you know, or have you heard, whether it is the practice in New York City to use tests more than once?

A For the reason that the questions are published

after they are used they can't be used again in the same form so that there would be no reason to go through the detailed analysis for item revision for a subsequent use.

Q There was a development of a line of questioning that led you to say that it may be that people who answer the questions correctly on the test may not do the job, and that would be true of this test perhaps. Is it true of any other test?

A I am afraid it is true of all tests, and as Ihave said on several occasions it is an imperfect science and even a test that comes up with a validity coefficient for predictive purposes that is very respectable in psychometric terms, that such coefficient at probably around point 5 would be regarded very well, because it improves your prediction, but in a correlation point 5 between a test score and some performance criterion you would have very many people doing well on a test and purely on a job. It is not a perfect predicter such as LSAT does not perfectly predict performance in law school.

THE COURT: And a law school doesn't perfectly predict what happens afterward.

THE WITNESS: That is true.

THE COURT: They say the A students become --

THE WITNESS: CPAs.

THE COURT: Something like that. And B students become judges and the C students become the wealthy lawyers.

Q You were present when Mr. Jackson was testifying?

A Yes.

Q Do you recall whether or not Mr. Jackson started out in the Agency for Child Development or did he start out in HRA Central?

A I don't remember.

Q He did start out, I believe -- isn't that correct, Mr. Jackson? Didn't you start out in HRA Central?

MR. JACKSON: Yes.

Q He started out in HRA Central and then was transferred to the Agency For Child Development, and he dealt with personnel in both matters. Do you still say it would be important for Mr. Jackson to know the functions of HRA Central as compared to the functions of ACD?

A The impression I get from the variety of the duties and from having read some of the forms that relate to the jobs, the specific jobs, it would seem to me to be hard to find one of the jobs in which people didn't need to have an awareness of the agencies within HRA.

Q Do you recall whetner Mr. Jackson mentioned whether or not he supervised? He did mention he supervised. I don't know where I am getting.

Let's see. Just to sum up, if you read the cases in this area you get the idea that there is a test out there waiting to be discovered which is perfect. Do you have any comments on that, any sum up, final comments on the existence of the perfect test?

A I don't think I will live to see it.

MS. OMANSKY: Thank you.

THE COURT: That is a long time to come. Thank you very much, Dr. Katzell. Your testimony was very interesting.

MS. LOREN: Dr. Williams.

E V E R E T T B E L V I N W I L L I A M S,

called by the defendants, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. LOREN:

Q What is your profession, Dr. Williams?

A Psychologist by training.

Q And what degrees do you hold?

A I have a Ph.D. in Psychology from Columbia, two masters degrees from Columbia, one in psychology and the other in business administration, and a B.A. in psychology and philosophy.

Q To what professional organizations do you belong?

A I am a member of the American Psychological Association, the American Educational Research Association, the New York State Psychological Association, the Association of Symbolic Logic --

THE COURT: That is good enough for me. I don't know how many Mr. Mintz wants.

What I would like to ask is what portion of a psychologist's budget goes to dues in associations.

THE WITNESS: Considerable, unfortunately.

A Dr. Williams, can I ask you at this time to state your ethnicity for the record?

A Black.

Q Do you have any publications?

A Yes, I do. By name there is an article on deductive reasoning and schizophrenia. There is a chapter in a book which is an introductory text to psychology published by Floyd Drew.

THE COURT: Is that by yourself or in collaboration?

THE WITNESS: The chapter is by myself.

THE COURT: I see.

A There are some other articles connotative of meaning in driving, which is a description of a testing procedure for identifying potentially good and potentially

bad drivers.

THE COURT: Of cars?

THE WITNESS: Of vehicles, cars, trucks.

THE COURT: Is it true women are worse drivers than men?

THE WITNESS: No.

A A more recent paper is one given at the American Psychological Association in 1971 on the testing of minorities in new opportunities and more recently in 1972 on the testing of minorities and the problems applicable thereto.

Q Where are you presently employed?

A At the Educational Testing Service, which has a home office in Princeton, New Jersey.

Q What is the Educational Testing Service?

A It is a non-profit organization that is chartered in the State of New York under 501 C.3, in which its primary business is one of test development, test administration, test construction, and it offers otehr services to educational institutions and to professional organizations ranging from dentists to lawyers to mechanics, a local array of professionals.

THE COURT: Those are the SATs and LSATs, et cetera?

THE WITNESS: Yes, and for business school and occupational schools.

Q What are your responsibilities?

A I am vice president in charge of operations, which includes 7 divisions primarily relating to the task of assemblage, distributing, scoring, managing, testing test centers, people who are involved in the administering of tests, et cetera.

In addition to that, I am in charge of an educational development unit which is concerned with advance technology in education, and two corporate responsibilites, one in assurring that the testing procedures inETS internally are in accord with acceptable professional standards as far as ourselves, and accordingly we have to monitor the test construction, the test administration, and the test interpretation policies of the various programs.

Next, I am in charge of a special committee related to the assuring that test sites where studies are sent to take the various tests mentioned before are free of what is called a hostile element that might be hostile to them because they are minorities, women, or what have you.

Q What positions did you hold prior to your affili-

ation with ETS?

A I was an associate dean at Teachers College at Columbia University, working with the dean in the area of administration, in general administration in terms of action plans for the college, and so on.

Prior to that I was a director of the computer section at Teachers College in which I served administrative functions, the research functions and the student education functions. Prior to that I functioned as counselor in two deans' offices, one at Hunter's College and the second at Columbia College of Columbia University.

I was also a professor and assistant professor and I taught both at Barnard College while being at Teachers College.

Prior to that I was an interne in the Veternas Administration programs in the General Medical and Surgical Hospital in East Orange, New Jersey, Montrose Psychiatric Hospital at Montrose, New York, the Brooklyn Regional out-patient clinic in Brooklyn, New York, as a clinical psychologist doing testing, psychotherapy, and the rest.

Q Have you ever been involved in the preparation or formulation of guidelines in the area of employment testing?

A Yes, I have

Q What guidelines?

A For the office of Federal Contract Compliance. I have been a member of the Ad Hcc Advisory Committee whose charge was to review the earlier specifications that had been brought into being, to update them, to revise them, and finally from them assist in designing two books, one for field audit, and the second for personnel officers who would be charged with the use of these documents.

THE COURT: For what office?

THE WITNESS: The office of Federal Contract Compliance, which was in the Departmentof Labor.

A The second was the testing committee for the American Psychological Association ofwhich I am a member. The charge there was and is to update the American Psychological Association standards of test construction and administration which happen to be referenced by OFCC guidelines and EEDC guidelines. Accordingly, it was not necessary to update them.

Q Are you familiar with the currently existing guidelines of the EEOC on employment testing?

A Yes.

Q Are you familiar with the proposed federal uniform guidelines on employee selection procedures?

A Yes, I am.

Q Have you been asked to comment on these proposed guidelines?

A Yes, I have.

Q By whom?

A By representatives from the Civil Service Commission and also from EEOC, the legal staff.

Q On what subjects were you asked to comment?

A We had to review the entire set of proposed guidelines to see whether they faithfully represented the content of the former set of guidelines and whether some of the proposed revisions to the public sector would do any violence to the generality of the guidelines.

Q Was this the U.S. Civil Service Commission?

A That is correct.

MS. LOREN: Your Honor, I move the admission of Dr. Williams as a qualified psychometrician.

THE COURT: Permission granted.

Q Would you define content validity as used in connection with employment testing?

A It is a validation strategy in which one is concerned in drawing an inference from the results on a test and generalizing with skills or personal attributes of people. The strategy entails typically a task analysis

of some sort where one goes in, and one might do that in a variety of ways, but a task analysis.

Secondly, the establishment of categories or in this context it is identified as areas which are relevant or presumably which would contain all the elements of a task analysis. That might be done by rational examination or by statistical procedure.

Thirdly, it entails identifying the format that the tests should take, which would mean paper and pencil, simulation procedure, or some performance activity that could be observed.

Fourthly, it entails the construction of items once the format has been decided, the construction of items which would go into a sample each of the categories. Each of the categories in this context might require several items before you would have some confidence that you were getting a reliable measure of the dimention.

Fifthly, there has to be some confirmation that the test is being administered in a way extraneous influences are not adding error to the results.

Sixthly, it entails some estimate of the reliability of the areas of the clusters that have been included in the test. And hopefully you can assume that to get a general estimate of the reliability of the test.

Q Is it possible to assess the content validity of an examination after the fact?

A Yes, it is.

Q What would a testing expert be evaluating when he does that?

A You essentially would have to go back and see if the steps that are verbally identified in writing or otherwise are a relevant step, and, secondly, hopefully go back and get some sub-sample of the data or observations that had been called upon or gained by the first set of task analyzers and/or test constructors.

In effect you would retrace those steps and see if they made sense yet from another independent vantage point.

Q Is this the same process that would be involved if you were asked to construct a valid test from the beginning?

A Yes, essentially, except it might not be as extensive as the first.

Q Could you please describe what you were asked to do by defendants for the purpose of this litigation.

A I was first called by Mrs. Willingham and asked if I would consider looking at the procedure that had been followed in the valida-tion effort and then comment --

THE COURT: When you say the validation effort

you mean the validation effort made after the exam was administered?

THE WITNESS: No, I do mean that in content validity all the steps taken are central part of the validation effort.

THE COURT: Including what was taken before; in other words, the job audit, et cetera?

THE WITNESS: Yes. Those are essential characteristics of a content validation effort.

A If I would take a look and then give my professional judgment or share my professional judgment with her and other of her colleagues as to whether it had been in accord with professional standards and if I thought it had been would I be willing to say as much at a trial. She didn't ask me about the alternative.

Q Do you recall when she first contacted you?

A It was in October when she first talked with me by phone. It was at that time that I suggested that she might want to contact other people. She called again and I consented that I would at least take a look, so she agreed to send to me some materials that I could examine, and I think they arrived on October 29th, dated October 26th.

Q What materials did she send you?

A I havethem here. It is a copy of the test

plan. It is an announcement. It is a copy of the test, with a key. And there is another document, I guess it is called Experience Form A. It is a notice of examination.

Q Did you agree to testify for the defendants at that time?

A No. I agreed that I would first look and we could take the next step to the next question.

Q I assume that since you are here after looking --

A I agreed later to testify on December 26th, as I recall.

Q How did you go about determining the content validity of this examination?

A I was really examining the content validity procedure. It was arranged through Mrs. Willingham for me to interview various people who are employed in HRA. I did not know anything about them, their titles, or what have you at the time. I talked with each of the people and in some instances were able to observe partially what they were doing, and then I talked with the persons who had been responsible for the construction of the test, such as Mr. Rosenberg, or for at least part of it, and also Mrs. Willingham, and I talked to others in the agency.

Q Was it Mrs. Willingham to choose the people in the agency that you were speaking to?

A I don't know she chose them. I depended upon her for my contact to set up appointment hours and people.

Q How many people did you interview?

A No, according to my count.

Q Could you give us their names and po. tions and tell us about what they did?

A Yes, I can. In fact, I guess the number 9 is not entirely correct; it is really 12.

I interviewed the following persons: Miss or Mrs. Iona Pressley, who is in MCDA, a director of personnel; Mr. Javier Antompetri, who is in CDA as an acting budget director; Mr. Roman Mogilinski --

THE COURT: I am not so interested in their names as in their positions.

Q Were any of these people supervising hjman resources specialists?

A I am not really sure that they were. Some had taken the tests, and some do have that label, yes. Some had taken the test and indicated that they had passed it for the Sup. level. Some had taken the test and not passed it. Some were functioning as supervisors, in fact. Some were not who had the label.

Q How much time did you spend interviewing the people in HRA?

A Per person it varied, but approximately an hour, sometimes longer. I spent four days. There are half days in some instances.

There are five days, but one of those is really a half day.

THE COURT: Am I to understand the others were roughly full days?

THE WITNESS: Yes.

Q In the course of visiting these different agents what did you observe as to the nature of the job of supervising human resources specialists?

A I guess some of the other witnesses have testified they are highly variable in terms of what they are doing, and ranging from people who had the responsibility of policy design and review from persons such as Mrs. Kazajian of ACD, who is assistant to the Commissioner, topeople who did a lot of report writing, such as Mrs. Cashman, ACD supervisor senior planner, to people who were involved with personnel and personnel review procedures. There was a person in -- I suppose I refer to it as the transportation distribution center where a lot of that kind of work was done -- to people who were handling the low level budget. I call it low level because I am just tallying up figures in preparing the report -- budget things, budget reports,

to persons such as Mr. Mogilanski, who had sophisticated kinds of tasks such as policy analysis, it is a policy and budget system design, which involved looking at a lot of the financial aspects of the city and how it related to the various agents, and so on. So it was very varied.

Mr. Stephen Krause was performing more traditional fiscal policies of field audits and looking at the correctness of collection data, and so on. The variability was quite remarked.

Q Did you reach any conclusions regarding the adequacy of the job analysis performed by the department of Personnel?

A Yes, I did. It seemed to me, given the kinds of policy constraints that exist in the agency that it was a very well done job of doing both the job analysis and the test construction. Under the circumstances I would say it was very good.

THE COURT: When you say given the policy constraints, are you thinking in particular of not interviewing professionals?

THE WITNESS: That is correct.

Q We have heard testimony that only four out of approximately 8 permanent supervising human resources specialists were interviewed. Do you have any opinion

as to the adequacy of the sample here?

A For a total of nine that was very adequate in terms of a sample percentage. Under that policy constraint it is adequate. Under a larger consideration, if one had a full domain of people who were incumbents then you typically would want to have more observation points if there are these wide differences.

There are rules of thumb about that in terms of how many people you would, or what percentage of the total you would interview. Sometimes that varies from 10 per cent to 25 per cent of the total class.

In some instances, in some undertakings, the percentage can be much smaller.

But I would say under these conditions that was adequate.

THE COURT: In any event, whether it would have been nicer to interview more people -- not nicer, but more effective -- if the policy weren't against it, I understood your opinion also to be that you believed the test to be adequate, is that right?

THE WITNESS: That is correct.

THE COURT: Would your opinion as to the adequacy of the test be altered if the policy were changed?

THE WITNESS: It potentially could. For example,

the reason I say that, in the validation effort Mr. Rosenberg and/or others who helped him identified eight areas that they felt to be important. It is conceivable that there would exist a class of employees that were doing something quite different, and accordingly one of those areas, any number of those areas, is not sufficient to cover what he or she is doing.

THE COURT: You are talking about the possibility you might have to add something to the examination?

THE WITNESS: One might add and one might conceivably minimize the importance of one or enhance it. But since you don't know what is out there you can't really say with firmness.

Q Dr. Williams, the position of supervising human resources specialist is what is known as a generic title. We have had some testimony that perhaps this should be broken down into a series of different titles. Based upon the interviews you conducted what is your opinion as to the appropriateness of the generic title?

A It seems appropriate just because people are doing so many different things, and although I don't know what all the policies of the agency would be, from the information that has been given to me it would seem that there are not enough people in some of the categories or some of the function

areas to be able to justify separate titles, but that might be a matter of circumstance.

At the moment there are insufficient number of occupants possibly and the administrative practice of having people shift from one place to another probably wouldn't add anything to break it down into smaller specialty areas. That is if the practice continues where people move. In some instances I observed one person who had responsibility for some 50 odd people for a short period of time and then the next time she was involved in report writing with responsibility for no people. With those kinds of fluctuations and that kind of fluidity in the system it seems to me you are stuck with generic classification.

Q Do you have any opinion as to whether the three specialties that we have had testimony about here in the MDT and the management and the community programs would be any more appropriate than the generic title?

A Any more appropriate?

Q Yes.

A My response to whether it is appropriate or not is that in some instances in some ways I could argue that from what I saw one might want another category that dealt only with financial auditors or you might want another category that dealt with people who dealt with nothing more

than just policy planning. They are all different in kind.

It would be hard for me to say that that would be more appropriate.

As an administrator I would probably have a bias of saying I would stick in the generic, but an administrator in the city system might have different kinds of problems.

Q Did you review the open competitive and promotional examination in question here?

A I looked at one copy of it. I am not sure I have both copies of the exam. I have one copy of the exam.

THE COURT: The question is not what you have but what you have looked at.

THE WITNESS: The one I have is the only thing I have looked at.

Q Which one is that?

A I have 1631.

Q Dr. Williams, do you have any specialized training or experience in the field of social services?

A I have worked in that field and I have taken courses in that field. You have to as a part of psychology and part of getting advanced degrees. So I would say yes from that vantage point.

Q Do you consider yourself qualified to make evaluations of the subject matters of this examination?

A I would say on many of the items or the areas that are specified here I would feel that I could be competent to comment in some knowing way.

Q Did you reach any conclusions concerning this test?

A Yes.

Q Would you tell us what they were?

A I think in general, in the main, it is a good test; I had some comments about some of the items. I think Dr. Katzell had mentioned some of the characteristics that I would also agree with. I think there are some specific sorts of things. There was comment about Item 11 this morning. I had a thought about that, too.

In the main, I would say it is a good examination. I happen to have seen, looking over her shoulder, the item analysis. As I looked at those tallies I think that supports the general view it was reasonably well put together.

THE COURT: You said you had some thoughts about question 11. Do you mean they were prompted by this phenomenom of so few people getting it right and more people who were in the low group getting it right than those in the upper group?

THE WITNESS: It is related to that. Specifically, whenever you get an item -- if one were to run the kind of item analysis that would generate a biserial coefficient

or another variable of that you would probably be able to see the way in which the alternatives are working exactly, and if the keyed choice is working in a negative fashion you make a certain kind of decision with respect to it.

Quite specifically we were looking at the choices, and I guess someone had mentioned choice A, B or D and from a professional vantage point you could argue about certain things as to the goodness of the alternatives.

Q Based upon your observations and your interviews, do you have any opinion as to whether the exam in contest has content validity?

A The content validation is partly defined by the procedure and the procedure certainly fits the content validation.

Second, from an impressionistic vantage point of looking at and interviewing people who passed the exam and knowing where their rank was, what rank that person had on the exam, I would say it is in keeping with my impression.

In brief, the examination is discriminating among people on some variable of competence.

THE COURT: Do I understand you mean when you say that there ranking is in keeping with your impression that among the people that you interviewed you later found out how

they ranked?

THE WITNESS: I saw it. I happened to see a print out. I don't know exactly how, but one of the persons felt she had been very close to the top in the test and I confirmed that she was.

THE COURT: How many people's grades did you see among those you had contact with?

THE WITNESS: I did not see -- I only saw one score of an individual, but what I saw as those persons who passed and those who did not.

Q Did the people in the interviews tell you whether they passed or not?

A Yes, all of them did.

Q Do you think any other form of validation was feasible in this examination?

A Not technically.

Q Why not?

A If one were to use one of the other two validation procedures the first being label criterion related validity, which would include predictive validity and concurrent validty, you would have to have some reasonable large cluster of people first in which to derive the criterion against which you validate the test within a select set of job functions.

Secondly, you would have to have some stability in those areas because it presupposes that you have some reliable measure on both the criterion and certainly reliability in the test.

That wouldn't have been possible under these constraints. Construct validity wouldn't have been entirely relevant except if one were trying to identify things like responsible behavior, leadership,honesty, et cetera, and these variables were not being called into question or being assessed as being relevant for the test.

There is nothing that I have seen in the categories that have emerged from the test analysis that would indicate that you would want to adopt a construct validity procedure.

Accordingly, the remaining one would be content validity and that would be the most relevant here.

Q You testified before you are on a committee which was changing or reviewing the APA standards, and you have also been asked to comment on the proposed uniform federal guidelines in employee section procedures?

A Yes.

Q Is there any change being made in either of those two guidelines on the emphasis given content validity?

A There is a change in the uniform guidelines where there is much more weight, if you please, being given to the desirability of content validity relative to the other two, construct and criterion, the reason being in some instances it is not possible in principle to use a criterion related validity approach or construct, and accordingly one has got to begin to identify procedures in ways that makes content validity much more practicable and understood.

Within the APA guidelines there has always been equal weight because the validation procedures are regarded as inference schemes where it depends upon the kind of inference one is trying to draw as to what kind of validation procedure you would use.

That has been given equal weight within the profession, and new APA guidelines there are greater detail given as to what might be certain kinds of pitfalls and essential steps that must be taken if the examiner or test constructor is to use one of those procedures.

Q I think it was Dr. Katzell who commented about the qualification of the test mode used. Do you have any comment based on your observation?

A The test mode, paper and pencil, related to an alternative such as T and E or a simulation procedure or what have you, is typically a function of some practical con-

straints, one, and secondly what kinds of decisions are you trying to make.

The practical constraint is when you have large numbers of people you have got to design some way of treating them all fairly and one an equal basis and hopefully at some minimal expense, which is usually thrown in.

The preference then would be to use paper and pencil because, one, you can easily administer to a large sample of people.

Two, it is possible to sample a large variety of behaviors that are verbally mediated, written down. And, three, it is cheap. Otherwise, you wouldn't be able to get through the process of evaluating if you had thousands, and some industries do, applicants who were coming through for consideration. It is a little difficult I think in this instance to think about some other kind of performance mode. For example, if you think of people who are primarily assigned the task of reviewing and writing policies for some aspect of some sub-title of the agency, what would you get? You would get samples of their written behavior. Some who have to go through an evaluator. While other people were making decisions with respect to printing and distributing, you would have to get samples of behavioral decisions they made. I think the most appropriate mode here is probably a

paper and pencil test relative to the alternatives that I know about.

Q Mr. Mintz suggested before that the fact that there are provisionals serving in a position supervising human resources specialist who have received a satisfactory rating from their supervisors might serve as some kind of what he called a rough concurrent validity study. Do you think that is possible?

A No.

Q Why not?

A There has been ample mention of a halo effect, but I think that you don't have the part of the people who were judged to be unsuccessful. If they were still there, or identifiable some place, and you could get some ratings on them, that would be fine. But short of that, if there is not to be any kind of measure on performance, supervisor's ratings or something else which would contain their own problems, there would be no way of making the assertion, although one might want to, that the existence of this class of employees is prima facie evidence of validity or of satisfactory performance. Unless there is clear evidence that every time there is an existence of an unsatisfactory act the person is either terminated or there is some mark to that effect put into a folder there is no systematic

collection of data that would permit you to say that you have some kind of performance rating.

MS. LOREN: I have no further questions.

THE COURT: Dr. Williams, are you going to be in New York tonight, are you going back to Princeton?

THE WITNESS: I live in New York.

THE COURT: How long do you expect to be? Is this the last defense witness?

MS. OMANSKY: Yes.

THE COURT: Mr. Mintz, how many hours do you think you are going to consume tomorrow? I am trying to see if we should go longer tomorrow or if you will have enough time.

MR. MINTZ: As far as I know now, and I don't see any reason it would change, tomorrow will include only Dr. Williams' cross examination and Dr. Loposes direct and cross examination which should take roughly as long as perhaps Dr. Katzell. I would presume we could finish tomorrow. I am willing to go ahead and cross examine now, if the Court wishes.

THE COURT: If I thought you would conclude your cross examination by around 5 o'clock I would go now.

MR. MINTZ: I can't make that promise.

THE COURT: Any objection to returning?

THE WITNESS: No.

THE COURT: Why don't we start at a quarter of ten in the morning?

We will then have made up everything but ten minutes of what we are losing now, and in case we get pressed we are a little farther ahead.

(Adjourned to Friday, January 11, 1974, at 9:45 a.m.)

James C. Jones, et al.

v.

73 Civ. 3815

The New York City Human Resources Administration, et al, etc.

New York, January 11, 1974
10:15 a.m.

- - -

(Trial resumed.)

- - -

THE COURT: Good morning, ladies and gentlemen.

My apologies for keeping you waiting, but the weather was a little too much for me out my way. There was ice all over.

I think we are ready for the cross examination of Dr. Williams.

E V E R E T T B. W I L L I A M S, resumed.

CROSS EXAMINATION

BY MR. MINTZ:

Q Dr. Williams, would it be correct to characterize your experience in psychology, perhaps your training and experience, as primarily clinical rather than the field that is generally known as industrial psychology?

A No.

Q It would not?

A No.

Q In your explanation of your background my recollection is that you mentioned work with ETS, which is a testing company. I don't recall anything else of that nature. Could you refresh me on other industrial psychology work you have done?

A Yes. My formal specialty in graduate school was in the clinical program. In these clinical programs you have a wide variety of latitude with respect to some particular areas.

In my particular case I was involved in both test instruction, as a graduate student, for the purpose of diagnostic testing; and, secondly, for the purpose of trying to establish predicted measures that would describe the behaviors of drivers.

This effort occurred prior to my receiving the Ph.D., and years after that.

And after that most of my professional behavior was involved with organizations such as the American Occupational Therapy Association, in which I was a consultant for the certification exam for eight years, and involved evaluation of teacher corps training, and the kinds of objectives that were set in educational systems were those particular programs, as well as the evaluation of the kinds

of teaching context in which Peace Corps volunteers would find themselves, and the evaluation of those volunteers.

So in the traditional sense of clinical practice doing diagnostic testing with projective devices, individually adminstered IQ tests, that was a part of it, but that was not by any means the major part.

Q Well, what is the difference between testing for diagnostic purposes and testing for employment purposes?

A Well, if you think of diagnostic testing within the context of a clinic or a hospital, typically this occurs in an individually administered testing session where the psychologist or the psychometrician might use a battery of tests to gain some kind of assessment of personality function, aptitude or IQ level.

If he is called upon to give some kind of opinion with respect to appropriate treatment patterns, he would test for that, or the presence or absence of some organicity, brain functioning, and so on, he would do that.

On the other hand, in many instances, not all of them, in many instances of industrial personnel testing, one tends to use a group setting as opposed to an individual setting. One does not tend to use some of the kinds of personality devices that are found in clinical settings, such as the Rorshak, TAT, although one can use those at

certain levels, and I am not so sure that there is a sharp line. It depends upon what level.

For example, in industrial psychology, if one is trying to appraise a person for an executive position, typically that is done with an individually administered kind of battery.

Q We are dealing here with an examination designed for and administered to something in the neighborhood of 11 or 1200 people, more or less, simultaneously.

Is that a different experience than the clinical diagnostic testing?

A That is a different procedure. That is more comparable to what happens or what is done for a law school or SATs, where you have got a large group of people where you have got to administer tests under some standard condition.

Q Does your role in ETS involve test construction?

A Test development is the way we refer to it, and I only add that qualification for the following reason: The test developing activity occurs with a whole team of people, with content specialists from the outside, with experts from the inside, and most of my involvement is very minimal, although there are some, especially with the --there is some involvement that I have had with a

National Teacher examination, which is one examination. But in the main, no.

Q Then you don't in your experience write test items?

A No. The writing of test items is done at ETS by outside committees.

Q Have you ever conducted a job analysis personally?

A Yes, I have.

Q When and where did that take place?

A That took place while I was in New York at Columbia as a research assistant and also as a research associate in which we were doing two things:

One, we had to try to understand what were the real life context situations in which truck drivers, especially Esso at that time, now Exxon, truck drivers found themselves within the densely populated area like New York City, or a not so densely populated area like Long Island, or other areas around the country, such as Chicago, which is one.

Second, we had to do a job analysis, but we used a different technique, namely, that of a critical incident technique, in which you invite other professionals or experts to define an instance of very good driving behavior and an instance of very bad driving behavior, according to their experience under different conditions, such as

daytime driving, nighttime driving, et cetera.

The reason we use that is that there is a difficulty in trying to observemost of the significant instances of driving, so you had to depend upon others who are in that context more often and knew different aspects of it to define those incidents.

After we did that the whole categorization process continued in the office, the item writing, the elimination of items the review of items, the construction of pilot tests and reconstruction, and so on.

Q You state you were involved with this entire project?

A Yes. That was a three-year grant we had.

Q Is there a distinction between designing a test to examine a particular construct such as driving ability as compared with the test to examine the entire range of abilities necessary to perform a job?

A The process isn't significantly different. The difficulty is different, where you don't have tasks that are well defined you have got to make what are usually called second order or third order inferences about what underlies what you see and then have some kind of confirmation of that, either through content validation with a colleague or some substantiation process. It is difficult that the process is not, the logic is not --

Q It is more difficult to do the order?

A It is difficult. Any time you don't have a well-defined set of tasks you have a greater difficulty. You are setting parameters on whatever you are doing

Q Are there any other occasions on the one involving truck drivers in writing job analyses?

A For professionals such as computer programers and key punch operators and unit record machine operators, which one of the responsibilities that I had, not for the

purpose of test construction, but for the purpose of personnel appraisal by the personnel office, writing job descriptions for computer programers, key punch operators and unit record machine operators.

Q Is there a difference in the nature of the job description when you have that difference in purpose?

A No. No, the only -- I suppose if one were to cite a difference it might be somewhat in the specificity of language, because there are times as administrator you might put certain things in a particular way because you know it is going to be acted upon by another office. If you have an expectation that someone has got to go through the behaviors of constructing a test item you might want to make it a bit more specific in some instances in order that the next person has some clarity as to what is intended.

Q Other than the test for driving ability, have you ever been involved with designing -- and you also mentioned one for occupational therapists?

A Yes.

Q -- have you ever been involved with designing an employment examination?

A Yes. Well, that is a certification examination which leads to employment. No, I haven't been

involved in other projects aside from those two.

I have assisted in the design of tests for secretaries, a content validation test. I call it a small, informal effort because we were assisting the personnel office on their testing program.

Q My experience may or may not square with yours, but it seems to me that the classic example of the content validation test is usually the secretary's test because if you want to find out if someone can type you have them sit down at the typewriter and see if they can type. Isn't that one of the easiest things to do?

A The fact is in the university setting you have some offices that would require a secretary to type a lot of statistical tables and some don't type that very well, because they have to interact with the carriage in ways some don't want.

Others might request a secretary and want typing skills of 40, 50, 60 or whatever words per minute. The fact is she doesn't spend that much time doing that, she might spend time answering the phone or filing papers.

There is always a need to be sure that the weight given to typing was not extreme. But if it is

just straight typing in the sense I think you might have meant it is fairly straightforward.

Q Do I glean from what you just said that it is important to be very clear that you know what the person is actually going to do and not to assume he is going to have a generalized test?

A I think in that context that I referred to, I mentioned before I was in charge of the affirmative action program at Teachers College and we were concerned that various applicants, especially minority group applicants, not be rejected on an irrelevant skill if in fact it is not going to be called upon. You have to look and see if that iswhat is being called upon.

Q You mentioned yesterday what you referred to as seven steps in content validity. Unfortunately, the transcript isn't in and my note-taking wasn't that fast. Would you repeat those, please?

A I should have said six rather than seven.

Yes, one is to conduct the task analysis or field audit as referred to here.

The second is to draw some inferences about those observations, to identify areas of functioning which would then be used to define the items, so on.

The third step is to decide on the format, you

know, the test, and one might have at least four options; one could have a written exam, an oral exam, a simulated situation or a replication of some sort.

The fourth is, once you decide that, to then go forth with the item construction which would permit you to sample the domain of skills or the knowledge that you are looking for.

The fifth is to assure that you have some standard administration procedure such that candidates are not penalized because of variations in the test-taking contest.

And the sixth would be some means of estimating the reliability of the components or areas of the test, and there are different strategies for that.

This last one becomes a little bit problematic where even in content validation procedure it is not always the case that a reliability estimate is either possible or desirable, but in other cases that it is there is a question of what kind of estimate would you use. And some of the standard ones -- or I should not say standard ones, but some that are more well known would not be in various contexts that would qualify it.

Q I am not certain what you mean by the second

one following the task analysis where you draw inferences and identify areas of function. Could you explain what that entails?

A Sure. For example, if I were to concern myself with doing a task analysis for a typist and observed that their finger movements, their fingers touch the keyboard in certain ways, I could therefore draw an inference or abstract, if you please, and say some motor facility is involved. There has got to be some way of estimating hos agile this person is digitally or to what extent is there a motor-visual coordination.

The motor-visual coordination would come into play if one has got to read some text in one place and do something else in a different place.

THE COURT: Like erasing a typo?

THE WITNESS: Advertently or inadvertently, yes.

A Then one would say there is a perception-motor skill that is involved and I might want to have some estimates of this perception-motor skill in different ways.

You then draw some inferences about the nature of the perception-motor skill. Is it one that requires a great deal of content of control first before the

person can develop it, or is it one that you can do by just rote practice, that is, more time on the machine, the greater the possibility of speed of the person will increase? Or is it the kind of thing where you have got to think about some instructional sequence that will help them in the control of the visual-motor project. That is one.

Another is --

THE COURT: Doctor, I hope that Mr. Mintz feels it is an adequate answer. I feel it is an adequate answer. We have to move along.

MR. MINTZ: Yes.

BY MR. MINTZ:

Q Where do you see this particular step as having taken place in the development of the exams at issue here?

A As I sit here obviously what I was talking about was an inferential process that the job analyzer has to go through. You don't have to see it, but he, through inferences that evolve, the tasks that were observed, he observed or learned through other people and then tried to summarize these observations into a smaller set of descriptors of the sort that appeared on that --

THE COURT: Cardboard, the test plan?

THE WITNESS: Right, the test plan.

A I don't see but I assume it is probably the case that he had notes about these things too, but I couldn't ascertain that. I have not seen that. But it is that step of going from some observation to a verbal description which is understandable by some set of people who will be involved in the act of putting together the items.

Now, the mental process you don't see, but the result of that process is put in the set of the descriptors of the test plan.

Q You made some assumptions about a set of notes you haven't seen.

A I take that back.

THE COURT: You don't need a set of notes. You can make inferences without notes?

THE WITNESS: Sure.

THE COURT: Gentlemen, I am concerned here. I have listened for about two days with interest, but nevertheless for quite a while, to the general principles of validation and so on. I would really like to get down to brass tacks.

I recognize you have a perfect right, of course, to try to bring out the limitation of Dr. Williams'

experience, but we have to get along. We all have limitations in our experience but now I would like to get down to the substance of it.

MR. MINTZ: That is what I am trying to do at this point.

BY MR. MINTZ:

Q I don't know if you have any material with you. I am referring to Defendants' Exhibit F, the officially denominated field audit report, dated February 4th. You are familiar with that?

A Yes.

Q Do you know where the items listed at the bottom of page 2, numbered 1 through 8 -- those eight characteristics -- do you know where they came from?

A My assumption is they are based upon the observations that Mr. Rosenberg made of what people are doing, as well as learning them from their supervisors what they were doing, and then he drew an inference that needed the knowledge, for example, or functions that related to public and private institutions.

Q This is an assumption on your part?

A Right. There is no other way. You have got to draw an inference about things you see in this context. Assuming that he is a rational man, that is

the only thing he could do.

Q Is it possible that these eight items or eight or seven or nine, perhaps, very similar items existed prior to even October 1, 1971, when he did this job description, and that in fact he later plugged in --

THE COURT: I will sustain the objection to that. Of course it is possible, but Dr. Williams' view about what is possible or not doesn't help me. Let's get Mr. Rosenberg back here if you want to find that out.

MR. MINTZ: My point is it would affect the quality of job descriptions.

THE COURT: If you want to ask if it were not based on Mr. Rosenberg's experience and inferences would it affect thejob description, I think that is a good question.

BY MR. MINTZ:

Q If these eight behavior descriptions or skills and knowledge that they referred to in fact preexisted in doing a job description and they were simply plugged in, they were preconceptions, would that affect the quality of it?

A You would have reason to believe in the quality of it then.

THE COURT: I may say, gentlemen, that judges are credited with a certain amount of common sense and I think any judge would realize that if somebody had preconceptions about what a job was he would just put it down on paper without reference to what he actually observed and that itself would undercut the whole proposition.

MR. MINTZ: I think that is critically important, sir.

Q You stated in this case that you interviewed eight -- pardon me; I believe it was 12 people at Human Resources Administration, of whom I believe you said eight were then functioning as supervising human resources specialists, is that correct?

A I am not really sure of all their titles, but I would say that is approximately correct, and I yesterday gave the reporter my list and I don't have their names before me. He was just going to give them back to me.

Q Of those approximately eight who were functioning as supervising HRSs, did they include both people who had passed and people who had failed the examination?

A They did.

Q Did I understand you to say that you drew some

correlation between your observation of them and their testifying?

A My clinical impression was that the people who passed the test were somewhat different with respect to their -- certainly their verbal facilities, certainly their knowledgeability about the agencies in which they were working than those that didn't. That is a clinical impression.

Q Are you seriously contending here that on that basis you could make a judgment as to the relative capabilities of these eight people that performed their jobs?

A No.

Q So, in other words, it may well be those who had less -- I don't know how you call it, but thellower clinical impression could in fact be the best people to do the job?

A Quite possible.

Q You also stated, as I recall, that as you understand the situation here, comparative validity -- pardon me; any sort of criterion validity test would not be feasible?

A Yes, it would not be technically feasible.

Q You are aware, I presume, Dr. Williams, that a very substantial number, well over a hundred,

perhaps in the nature of 150 or more of the people who took the test, were then and there at the time they took it functioning as human resources specialists, senior supervising human resources specialists?

A I am not aware of what they were function as. I am aware they were there. I do know, or did know, that they were there. The particular titles they might have had I am not sure of. You were saying that they were senior.

Q I meant supervising human resources specialists by provisional appointment.

A They were senior HRSs, and I don't know that. Maybe they were. I am not disputing it. I just don't know.

Q Their permanent title is not relevant. The point is they were functioning in the job for which they were taking a test, and there were something like --

THE COURT: The test, right?

MR. MINTZ: The test.

Q There were something like 180 people functioning in that job and the evidence here is that a substantial number of those 180 people did take one or both of these tests. Are you aware of that?

A Yes, I am aware of that.

Q Wasn't that in fact a rather uniquely well-presented situation for performing a criterion-related validity test in that performance valuations of these people could have been taken at about the time they took the test and compared with their test results?

A There are two things. One, indeed, if there were a system of performance evaluation in effect that gave you that kind of data, that would certainly be a major assist. The other problem in the criterion-

related procedure, especially in predictive validity, is the number of cases you have -- if one were thinking about doing it for each specialty one would have a problem with the number of cases that would be found in some given functional area.

It is possible to have a rating. You would have to go through procedures that would get you around the supervisor halo effect or the supervisor bias, and the bias has some various interactions of the same ethnic group and a different ethnic group rating each other. Theoretically, all of these are possible, but under the circumstances my understanding of what existed in both the agency and what the personnel office was asked to do, they weren't asked to do that.

THE COURT: You mean they just didn't have the system of doing that?

THE WITNESS: Yes.

THE COURT: That is a separate question from what Mr. Mintz raises, though it is influenced by it, and maybe the explanation of why it wasn't done, but in your opinion would it have been an opportunity to perform a criterion validation if in advance the rating structure system had been established.

THE WITNESS: If you have all that system

in place and you got around all the other pyschometric problems of reality and the validity of the criteria --

THE COURT: I don't know why all those problems would be different in this situation than in any place in which you are measuring performance of people on the job.

THE WITNESS: If I may, there was a recent study which culminated six years of effort at ETS trying to evaluate tests against six occupational categories.

In using supervisors' ratings you have interaction. There is the black supervisor rating, the black supervisee, the black supervisor with a white supervisee, and all the combinations thereof. The results are quite clear in terms of the functioning biases. Accordingly, one has to go into a more -- they are sometimes referred to as psychophysical methods of using triads or constant stimuli or some approach so labeled.

THE COURT: I understand what you are saying, Doctor. All that I am asking is whether what you are talking about, the problems that you are talking about, if you are going to rate people on the job, aren't simply an inherent risk always of rating people on the job.

THE WITNESS: Yes.

THE COURT: And at least the social sciences as you have described it have developed an awareness of this possible distortion and some capability, I imagine, of discounting it or correcting it.

THE WITNESS: Hopefully.

THE COURT: Again, I proceed on the assumption which you and your colleagues have made clear, that your skills, however great they are, don't produce perfection, and I don't think anybody expects them to.

Excuse me, Mr. Mintz. Go ahead.

BY MR. MINTZ:

Q Are you also aware, Dr. Williams, a substantial number of people who took the test are still functioning as supervising human resources specialists?

A I don't know that, but I assume it is the case.

Q Again, with the limitations you have expressed about the general difficulty which exists in any performance-rating operation in the period since this suit was filed from September until today, would it have been possible to get performance ratings and get rest results?

MS. OMANSKY: Objection.

THE COURT: Overruled. If you can answer it.

MS. OMANSKY: I think even as an abstract matter it is unfair to ask Dr. Williams that, because he is not aware of the injunction against doing anything with provisional employees, and I think the context, unless it is totally in the abstract --

THE COURT: Let me hear the question.

(Question read.)

THE COURT: I will sustain the objection because I don't quite understand it.

MR. MINTS: Dr. Williams said yesterdy and reiterated today a criterion-validity-related study is not relevant in this context. He agreed it would have been possible in October of 1972, when the exam was given, to get concurrent performance ratings and compare them with test results. I am asking him similarly would it have been possible --

THE COURT: I wouldn't say he has agreed if there had been an evaluation system it might have been useful to do so Of course, there wasn't any evaluation system as I understand.

MR. MINTZ: That we know.

MS. OMANSKY: First, I am not sure he agreed it was possible.

Secondly, I don't understand the deduction

from the abstract to this particular case. That is an inference.

THE COURT: Mr. Mintz hadn't finished his explanation.

Yes, Dr. Williams has in my estimation -- if I am wrong about what you intended to say, please let me know -- agreed if there had been an evaluatin system in effect at the time it would have been useful, I will use that word, as a criterion method of validation, to use that evaluation system, pointing out the hazards that existed, which I indicated I recognize.

Now, what is the next question you wanted to ask?

MR. MINTZ: That would have permitted the development of what would be known as a concurrent validity study, that is, comparing present performance with present test results.

THE COURT: Right.

MR. MINTZ: What I am asking now is if it would also have been possible to do a predictive study. You have test results of a year ago, performance as of now. Could you have gotten performance ratings and compared those two criteria?

THE COURT: I see no objection to that ques-

tion. If there is some premise that you think is implied that Dr. Williams doesn't know about, he should be informed of it. When you talk about the injunction I assume you mean the practice of the Civil Service Commission.

MS. OMANSKY: I think the premise was if in the interval between September and now the Department of Personnel had gone out and did rating studies, and obviously if the Department of Personnel -- it would have been difficult under the tenor of the injunction.

THE COURT: You mean the court's injunction?

MS. OMANSKY: Yes.

THE COURT: You are free to argue that.

MS. OMANSKY: I think the question as it was rephrased might be less objectionable, if that could be repeated.

THE COURT: All right. Then if you will read back the rephrased question, Mr. Reporter.

(Question read.)

A If you waive the policy restrictions you could do all those things.

Q Is it normally the case that the people who are taking an exam for a particular position are then

and there performing the functions of that position?

A I am sorry, I missed a word. Would you repeat it.

Q Is it normally the case that people taking an examination for appointment to a particular position are in fact then and there performing the functions of that position?

A Is it normally the case?

Q Yes.

A It varies. It depends on how they are organized. There are many instances, because of a shortage of personnel or manpower, people are put into a role where they have to have some kind of certifying examination. That occurs quite often. Even professionally that occurs. You could have people function as a lawyer without having passed the bar exam. There are some critical functions they could perform without passing the bar exam.

Q When you have such a circumstance existing, doesn't that give you an opportunity, if you care to take the time and make the effort, to in fact do a better job of evaluating your test?

A You always have an opportunity. My response to the task that you are asking me is that under the

existing constraints what can you do? If one had unlimited finances and unlimited resources and no restrictions with respect to the rules and policies, I am not so sure there isn't anything that you couldn't do -- well, not too many things you couldn't do.

THE COURT: What restraints are you talking about about apredictive validation? Once the test was behind everybody I am not clear what restraints you are referring to. Before it was taken I understand there were reasons not to speak perhaps to those who might take the test or alert them as to what might be the questions. I can see that might relate to an evaluation on the job beforehand even, but afterward what restraints would there be?

THE WITNESS: If I understand Mr. Mintz correctly he shifted from concurrent to predictive validity. In this situation one would want to have a reliable criterion which may be other than supervisors' ratings but performance output --

THE COURT: There must be some way to find out whether people are doing a good job or not. Sometimes I feel like I am in a never-never land when I talk about this. Are the problems here any different than they are for all of us in our everyday lives?

THE WITNESS: Not if one defines carefully what one expects from HRA, sup or senior.

THE COURT: Do you suggest that is harder to do in the class of employees we are talking about here than in other instances?

THE WITNESS: Yes, I do, because if you talk about a person on an assembly line in an automobile plant you can count the number of rivets and bolts he puts in. It is not easy to count the units of output in a social science -- in a social service context, so you are never sure. For example, one can count the number of lines of code that a person writes, but one doesn't necessarily know whether it is good code. One can count in a policy-making position the number of sentences one writes --

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Q Then are you saying, Dr. Williams, that in this setting, you don't think, regardless of policy restraints - forget policy restraints - that a predictive evaluation couldn't effectively be made because your profession has not yet developed to a point where it could rate the job performance of the employees here with sufficient standardization to be able to compare it with the test results, or are you just saying that it is tough to do that anywhere?

A It is tough to do that anywhere. I wouldn't argue that it is not possible in principle.

As I saw these positions and the people in them, it is not always clear what a unit of work is. One could take certain common sensical kind of measures, such as, does a person appear on the job regularly or on time regularly?

One could get some ratings from the community, if he is a community worker - does the community like this person or not?

Well, if likeability is a success indicator, that is one thing, but if being liked and still being able to move the community along, making it more self-sufficient, are taken into account, that might not be sufficient. That is to say that being likeable is not the same thing as helping the community mobilize its own resources to do something about whatever problems they have. So it is hard to know

what it is.

Q Well, I can understand the problems involved there, but don't those things relate, once we get away from assembly line workers or typists who do nothing but type, the large millions of service jobs that we have in the world today, don't your comments in general apply to service jobs?

A Yes, they do.

Q And doesn't that add up to the fact -- and I don't say this is bad; I am just trying to get to the point -- that there are substantial difficulties in the job measurement part of predictive validity?

A That is correct.

Q The job performance measurement part?

A Yes.

BY MR. MINTZ:

Q Don't the same factors which make it tough to effectively rate performance in a complex job such as this make it tough to design an exam which will effectively evaluate and predict performance in a job such as this?

A There is a compound factor here, but let me first say no, and I will use an example.

For example, we are presently involved in validation studies using the LSAT and the multistate bar exam, there

was one criterion or set of criteria that are reasonably firm, such as schools and grades in law school, first, second and third year.

On the other hand, none of this can be shown to have any relationship to the effective performance of what a person does after all that.

However, it still makes sense to say that I would like to insist upon a certain base level of knowledge and skills for the person to enter the practice of law.

Now, when you ask the question, is it more difficult, it depends on what kind of inferenceyou are trying to draw. If one is trying to draw aninference which would permit you to predict from the test to some event in the future, like predictive validity, that is terribly difficult.

If one is trying to draw an inference from the test and say "I think this person has a command over this set of skills and knowledge," that is not difficult; that is the content validation strategy.

Q That study you refer to involves, in fact, an attempt to develop correlation between LSAT scores and law school grades and bar exams performance, is that not correct?

A Those are criteria that have been enumerated. However, there is an interest in trying to identify what

is an effective lawyer.

Q But that study does not do that, does it; it does not suggest that it is going to evaluate lawyers performance and then compare that with --

A All the specifications for the study have not been completed by the law school council, so it is not clear what direction they might want to take, but I just happen to know there is an interest in being able to make that kind of thing.

Q Have you seen the specifications up to this point?

A Some, yes.

Q In fact, no one knows with any real certainty whether LSAT or law school grades or bar examination results predict effective performance of a lawyer?

A That is correct, because there is not a clear definition of what effective performance is.

Q Isn't the same problem involved here, that no one knows whether the performance of this exam effectively predicts performance on the job of supervising human resources specialist?

MS. OMANSKY: Objection. There is a premise that this examination was supposed to predict performance.

THE COURT: I am not proceeding on that premise,

but I will allow the question.

A Sure.

THE COURT: I think with regard to all validation endeavors, it is not a question that the law necessarily requires validation, but that validation, to the extent that it may exist, may prove whether an examination is legally sound or isn't legally sound, and I think Mr. Mintz is entitled to ask what the problems of validation are in this situation.

Did you understand the question, Dr. Williams?

THE WITNESS: I understood it, but I forgot it.

THE COURT: Well, you didn't have the same problems of trying to predictively validate, as I understand it, with regard to the jobs such as we are dealing with here that you have with regard to performance as a lawyer?

THE WITNESS: Yes, I was about to say that, that there is no claim for this test that it is predictively valid.

BY MR. MINTZ:

Q Would you say that the purpose of a test such as this is to predict as well as one can the performance of people as supervising human resources specialist?

MS. OMANSKY: Objection.

A Not as I understood it.

THE COURT: Overruled.

What was the answer?

A Not as I understood it.

Q What is the purpose of the test, then?

A As I understood it, there is an administrative problem that the city has of trying to identify a set of persons to be put on a list from which you could draw them at some future date according to their rank to fill certain slots that are available.

The second is to ascertain whether there existed a minimum set of knowledge and skills among these persons which would be expected on the jobs that they might be called upon to perform.

There is no assertion of predictable validity. All it is saying is that one can certify that this bit of knowledge exists. This is the same way as saying that you could certify that a person knows how to add and subtract, but that does not say he will be a good accountant or anything else.

Q When you refer to a minimum level of knowledge and skills, are you able to come to any conclusion about, in fact, what level, as it relates to performance on this exam, is the minimum that one could have to effectively

perform this job?

A As I talked with the various people who were doing widely different things, it did seem to me that the task that some had been called upon to do required, for example, in some instances very good reading skills. It certainly required some feel of dealing with people both within the work context and outside of it, as they cite examples of problems that they have been confronted with --

Q Excuse me, Doctor, but perhaps you didn't understand my question. I am not referring to the whole range of the job; I am referring to whether you are able to say what minimum level of performance on this test --

A You mean like a score?

Q Yes, exactly.

A No.

Q Finally, I believe you said yesterday -- and again, regrettably, we haven't gotten the transcript yet -- something regarding the testing for leadership and supervision abilities.

But do you recall speaking on that point?

A I think in the context of construct validation, yes.

Q What was it you said about that?

A I think I was illustrating that if one wanted to

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substantiate the presence or absence of an attribute or a psychological characteristic such as leadership, responsibility, or honesty, or dominance, one would use a construct validation procedure.

Q Not a content validation procedure?

A No. The only exception is that within the construct validation procedure it is inclusive of other procedures such as content, predictive, everything; so it is possible one could include -- they are not mutually exclusive in the sense that you wouldn't use something or be a part of one or the other when you're trying to affect the other.

Q Do you have an opinion, Dr. Williams, as to whether good performance on this examination would be indicative of any level of supervisory abiolity?

A It is indicative of whether they have possession of certain knowledge and skills about the agency.

Q About the agency?

A Yes, about HRA and the related content that has been defined --

Q Do you recall that approximately the first 25 questions on that examination don't mention HRA or anything to do with it, but simply ask about general principles of supervision and the like?

A Yes, I do.

Q Can you say with any degree of certainty that someone who answers most of those questions correctly will be a better supervisor than someone who answers only a few of them correctly?

A I can't say that. All I can say is if a person knows or doesn't know it.

THE COURT: I don't know whether you are in a position to answer this, but do you consider it a reasonable assumption that somebody who knows correctly all the answers to the first 25 questions may, or is likely to be a better supervisor than somebody who doesn't know all those answers? I mean, is knowledge irrelevant to the job?

A I would just personally say knowledge is, but the reason I stick very closely to my notion of content validation -- well, if I may have the indulgence of the Court for a moment, within the context of teaching one can find teachers who know a great deal about the subject matter who are not good teachers, and there are others who are excellent teachers who do not come up quite so high in that knowledge domain; so you can't draw that inference, although it seems quite reasonable if you want a teacher to teach

algebra in a high school, that person has to know something about algebra or calculus, and he or she either knows it or he or she doesn't know it.

Now the other problem is, how does he or she get it across to the students, and how do you clarify the understanding of those students, which is a different problem altogether, so you just can't draw the inference. You would like to, and maybe in the vast majority of cases, that would hold true, but, unfortunately, there are many times when it just is not true.

Q Finally, Dr. Williams, are you aware that the people who took one or the other of these two exams in issue may have had anything from a high school diploma or high school equivalency up to graduate degrees in one or another field of relevance?

A I understood that they had a varied educational background.

Q Would you be able to form any opinion as to the relationship between formal education and performance on this examination, whether there would be any?

A I could hazard one, but if one were to ask me what evidence I base it on, it would be more on experience, in terms of the data at hand, and I would say probably that persons with a greater amount of formal education

would do better than those with a lesser amount of formal education.

However, it is not always the case.

Q Doctor, you indicated yesterday, again according to my recollection, that this was a fair test, is that correct?

A Yes.

Q Are you aware of the fact in evidence here that the scores assigned to blacks and Hispanics on the average were substantially lower, the passing grades of blacks and Hispanics were substantially lower than that of whites?

A No.

Q Do you have any explanation for that or any comment on that?

A I empirically don't know. I have conjectures about it, yes.

Q Did knowledge of that in any way affect your view that this was a fair test?

A No, it does not, unfortunately.

THE COURT: I would suppose that is what the doctor's testimony is all about. It means an experienced person who has been very much interested in bringing about the very objectives that the plaintiffs are interested in bringing about - it doesn't mean he is right or wrong, but

certainly he must have thought about whether what has happened here renders his opinions questionable in his own mind.

Am I right, Doctor?

THE WITNESS: I have conjectures about it; I --

THE COURT: I am not asking about accounting for it. I am asking whether I am correct in assuming that you have searched your own conscience -- if that is the word to use -- as to whether your estimate of fairness can stand up in the light of the fact that this has had the unhappy result that nobody in this room wants it to have had.

THE WITNESS: Yes.

BY MR. MINTZ:

Q On the basis of your experience, do you think, and even given the strictures of the Civil Service System that we are working under, do you think an exam with less discriminatory impact could have been devised here?

THE COURT: That is, on which the blacks and Hispanics did better in comparison with whites?

MR. MINTZ: In comparison with whites, yes.

A And still have the characteristic of being job related?

Q Yes.

A That is difficult to say. I am inclined to say I doubt it -- there are some problems in this situation that

are really unique -- but I doubt it in this instance. I could imagine it in some other instance --

THE COURT: May I ask you this:

If the examination had been broken into parts in relation to the various sub specialties, or whatever you want to call it here, do you think that that might have produced the result, with the fund of knowledge being tested about not being so broad, the minority group applicants -- or the test might not have had the pattern result it had, or is that all a speculative area in your opinion?

A I would think it is conceivable. This is one type of problem. I think the assumption behind the generic title is ability across areas of functions.

On the other hand, if there existed a stable area where that certainly was not the expectation, and one might have preferred to have a test that just focused on that, where one was thinking about, say, a financial auditing test, one might just construct a test for that.

But, if I may, I think the problem here is larger than the test. I am not saying the test might not have contributed in part; I don't think it contributed much to this problem, and I think that if one looks at the sources of possible variance you can look at the candidates themselves with respect to either the assumed abilities that the

test is getting at, or knowledge and skills that the test is getting at, and/or the attitudes which usually are ignored, but attitudes which people have toward tests and their response to it, and I certainly think, as we have been deliberating here, that the characteristics of the test, that is always a place to look, but I think there are some assumptions, programmatic assumptions that might have existed in the agency in terms of how much experience would overcome some kind of deficit, because as I have listened to people talk about this, the assumption was that if brought in under the usual civil service route, many would not have passed. Then I assume there would have been an assumption that given certain types of experience one couldhave passed another kind of test at a later time. It could very well be, but programmatically that assumption is taken too lightly, and I say that on the basis of common experience, and one that probably many of us share, the reason for a Head Start program is not because people have problems, or the kids have problems with tests, but had deficits in educational experience, and we want to overcome that, and because there might be an age difference between one set of subjects and another set, doesn't mean that all the educational experience deficits are overcome.

Q You mentioned in discussing your work in designing

an examination for secretaries a concern with eliminating any testing for irrelevant skills, I believe you said, because of the impact this might have on excluding minorities?

A That is right.

Q What were those irrelevant skills?

A Well, take the simple one. Many offices would like to have a secretary who types at the fastest rate.

Now, there are some typing tasks such as tables and statistics where it is not the fastest rate you want. First of all, they are not produced that frequently, and, secondly, the primary variable is accuracy, and you would rather have someone who is terribly accurate in both reading and in typing than to have someone who was very fast as to typing, and that is an obvious one which always is or sometimes is overlooked, just because speed seems to be most desirable.

Another one might be a pleasant telephone voice, depending on where he or she, the secretary, is going to work. There are tacit kinds of operators and managers attitudes.

Q Do you see any indication that that concern with possible irrelevant skills might have had an impact here in excluding minorities?

A I don't see that, but I am not saying it is not

in existence. I didn't look for it.

MR.MINTZ: I have nothing further.

THE COURT: All right.

REDIRECT EXAMINATION

BY MS. OMANSKY:

Q Dr. Williams, you were given the situation hypothetically in which people have passed in this position of supervising human resources specialist; they had passed the previous examination, and they had been on the job for, let us say, a year or two years.

Now, what would be the effect of knowing that people have passed a prior examination on their evaluation by their superiors? Is that a problem?

A If the superiors knew that it usually confounds the measurements.

I responded -- maybe I should have been more explicit -- I responded to the notion of the question that if someone gave the exam at some prior time and you didn't know what the results were -- the supervisor didn't know what the results were, and so on, could you do a validation, and the answer is yes.

Now, the term "pass" or "not pass", one doesn't have to put in a cutoff score; one could keep that tacit.

Q But in this case, of course, there was some evidence

that everybody knew that people had passed the exam, is that correct?

A That is a functional restriction.

Q It is always a factor, isn't it, in rating somebody, that the knowledge whether or not they had passed a prior exam would color -- in addition to the ethnicity problem which you mentioned and the lack of a measurable criterion, this is also another problem, is it not?

A Yes, it is.

THE COURT: I take it you are bringing this out with regard to the predictive validation discussion, and my asking about that ?

MS. OMANSKY: And another thing, the situation where Mr. Mintz said the people passed the test and were on the job for a year, and why was it.

THE COURT: That is what I mean.

Q What effect would you give to an evaluation that says "Check whether this employee is satisfactory or unsatisfactory"?

How meaningful a valuation is that?

A It is usually too gross.

THE COURT: I think Dr. Katzell has testified on that, and I am aware of the obvious limitations.

Q Now, also on your cross examination I think Mr.

Mintz was saying supposing Mr. Rosenberg had preexisting categories for the knowledges and skills and really plugged in a description of tasks, now I am going to ask you, supposing there did exist a categorization, a prior categorization of knowledges and skills, and Mr. Rosenberg went out and did his job as he testified he did, and did a job analysis and came up with the same knowledges and skills, would that coincidence, would that identity make his job analysis any less valid?

A No.

THE COURT: If you are concerned that my remarks indicated that I thought it would, I did not. I simply thought that if a man uses categories not on the basis of what he has found but just on the basis of something lying around, that that obviously wouldn't be sound.

We all have to use concepts and words we know of in the past.

Q Is it possible that even on a test that has been predictably validated, that you would still find individuals who scored very high in the test and that did not perform on the job?

A Yes. The validation procedure does not guarantee that everyone is going to score the same way.

THE COURT: No matter what validation?

MS. OMANSKY: Objection.

THE WITNESS: Yes. That is just to be sure that the logic of inference is in fact. The phenomenom is not changed in your measuring.

THE COURT: Doesn't it boil down to this, that you have a lot of imperfect instruments in your profession like we do in mine; the tests are imperfect; the validation is imperfect, and if you can without sacrificing other value and policies, validate in as many ways as possible, so much the better, if you can come closer to a truthful conclusion as to whether the test actually does do what it is supposed to do?

THE WITNESS: That is correct. I just have one qualification. The purpose of systematizing the procedure is to be able, one, to minimize errors in inference, and if they do creep in to identify at what point do they enter so that you can take corrective action.

MS. OMANSKY: No further questions.

THE COURT: Thank you very much, Dr. Williams.

(Witness excused.)

THE COURT: We will take our morning recess at this time.

(Recess.)

MS. OMANSKY: I have no further witnesses.

MR. MINTZ: In rebuttal, the plaintiffs call Dr. Felix Lopez.

F E L I X M. L O P E Z, called as a witness in rebuttal by plaintiffs, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MINTZ:

Q Dr. Lopez, would you give us your educational background first, please?

A I have a master's degree in public administration and Ph.D. in personnel psychology.

Q From what school and when did you obtain that?

A From Columbia University.

THE COURT: Both degrees?

THE WITNESS: No. NYU.

THE COURT: Which is which?

THE WITNESS: NYU for the master's in public administration, andthe Ph.D. from Columbia.

I am also a certified psychologist in New York State, and I am diplomate in industrial and organizational psychology of the American Board of Professional Psychologists.

Q Could you give us your occupational experience?

A Currently, I am president of my own consulting firm specializing in personnel management, particularly in restructuring employment systems of many governmental and private employers.

Before that I spent 20 years with the Port of New York Authority. I was manager of selection and placement for 16 years, and then was manager of manpower planning and research for five years, and then I retired.

I am also an adjunct professor of organizational behavior in the Graduate School of Business Administration at Long Island University.

Q Would you state your professional associations, please?

A Well, I will state some of them. I am a member of the American Psychological Association, the New York State Psychological Association, the American Management Association, the International Personnel Management Association, the American Society for Training and Development and so on.

Q Are you, incidentally, a member of Division 14, Division of Industrial Psychology, of AAPA?

A Yes, I am.

Q What have you published in the personnel selec-

tion field?

A I have written four books. The first book was Personnel Interviewing, Theory and Practice, which was in 19[illegible]5. It is in its second edition now in the process of writing. It will be published later this year.

I also wrote a book Evaluating Employee Performance, published by the Public Personnel Association.

I did a monograph called Evaluating Executive Decision-Making, published by the American Management Association, which was a study of the decision-making abilities of about a thousand managers; and I did a book called The Making Of A Manager, in which I put down my theories of selection, managerial selection, supervisory managerial selection.

I have also published in many journals, the Public Personnel Review, Personnel Psychology and many others.

Q We are dealing primarily with two main occupational positions in the Port Authority and your present firm. What sort of things do you do relating to personnel selection, or have you done in those positions?

A In the Port Authority I was responsible for the selection of all employees. We had our own merit

system, not being under the New York State law, because we were a bistate agency. We had our own merit system that I developed and I had a staff that designed, constructed examinations, analyzed jobs, established eligible lists and promoted people from these lists.

But being that we were not under the state requirements we were able to introduce a great many innovations into the practice which then occasioned my association with many other public agencies throughout the United States at the state, federal and local level, principally, I would say, and most extensively with the City of New York Personnel Department, where since 1953 I have almost continuously been involved in the construction of and administration of examinations for principally personnel positions, I would say.

Because the city cannot use their own specialists to construct examinations for the personnel department, they had to bring in outside experts, and so I served in almost every capacity from item writer to serving on the Committee on Manifest Errors.

I also testified in court for the city in the state and Supreme Court.

Q In addition to your work with the City of New York, have you had association with other public agencies

in personnel work?

A Yes, in the State of New York, the State of New Jersey very extensively --

THE COURT: What have you done for the State of New York?

THE WITNESS: I constructed tests for them, I sat on oral boards for them. I have also conducted training programs.

THE COURT: Am I to understand generally this has been in the personnel field?

THE WITNESS: Exclusively in the personnel field. Not the tests, though, in the personnel field.

THE COURT: I meant the tests. In New York City the tests were for people in personnel, is that right?

THE WITNESS: I also did tests in the city for other agencies.

For example, I served on the selection committee for personnel director of the Human Resources Agency and I have done other general administrative positions. I have also helped with the firemen's examination.

Q Have you had any occasion to work with or be associated with the United States Equal Opportunity Commission?

A Yes. I was one of the first psychologists, I think, to study the differences in test performance between whites and blacks, which was very obvious to us, and to explore the reasons why that would be so and what effect that had on predicting job performance.

I did a study of the toll collectors in the Port Authority and found that while the differences were there they had no effect on four criteria of performance, and that study was published and became somewhat controversial, but the data was still there.

The Equal Employment Commission or its predecessor was very interested in what I was doing, so I was invited to serve on a research committee under Hobart Taylor, who was appointed by President Johnson at the time, and gave him some advice on Title 7 before it was enacted into law, and since that time I have worked on and off with the Equal Opportunity Commission in various capacities.

Most recently I have been advising them and giving them my thoughts on the new uniform guidelines that were referred to yesterday. Immediately before that I served on a task force in evaluating the selection procedures of the telephone company. I was a government witness in that FCC hearing.

MR. MINTZ: That covers the initial questions. I offer Dr. Lopez as an expert in the field of personnel selection.

MS. OMANSKY: No objection.

BY MR. MINTZ:

Q Do you recall when I originally contacted you regarding this matter?

A I believe it was in November or October, something like that.

Q Did you subsequently agree to examine materials relating to this case?

A Yes, I did.

Q Didyou have any conclusions or any opinions about this matter before you examined those materials?

THE COURT: What matter?

MR. MINTZ: The matter at issue here, the lawsuit and the issues involved in it.

A Well, I expected to find what I did find, because of my familiarity with the testing procedures of the city and having discussed the issue with various officials from time to time.

THE COURT: You mean before you examined the tests, after you had heard from Mr. Mintz what the results were in terms of percentage of groups passing

and failing, and so on?

THE WITNESS: He didn't give me any details. He said --

THE COURT: What did you know?

THE WITNESS: He asked me would I testify as a witness, and I said yes, I would, and --

THE COURT: If this question and answer is to mean anything to me I have to know what you did know when you expected to find what you found.

THE WITNESS: I think that will come out in my testimony. What I found was not a surprise to me, I felt, so that if that is the point of it.--

THE COURT: It isn't sufficient, and I am sorry, for me to understand what you are trying to bring out

MR. MINTZ: Let me try to clarify that.

THE COURT: I take it when Mr. Mintz met with you he told you something. What did he tell you?

THE WITNESS: He called me on the telephone and he asked me, he said he had a case involving a city examination in which there was a question about the adverse impact on a particular racial group.

THE COURT: I take it he told youwhat the job category was, or something like that, or did he not?

THE WITNESS: He did, but I didn't remember or recall it.

THE COURT: You knew they were not motor-truck drivers?

THE WITNESS: I knew it was the Human Resources.

THE COURT: That's what I am asking.

THE WITNESS: Right.

THE COURT: Once you heard that he had a case in the pattern that we have become accustomed to now, once you heard about that, you then, when you saw the test, were not surprised at what you saw, is that it?

THE WITNESS: That's right.

Q You have had extensive prior contact with testing procedures of the City of New York, Department of Personnel?

A Yes. And with many other public personnel agencies. I think I am pretty familiar with the whole thing of public personnel selection and their use of the competitive written examination as a major tool of selection.

Q It is that prior knowledge that led to these preconceptions that are borneout, is that correct?

A Yes.

Q What material did you in fact examine in preparation for your testimony here?

A I don't know what exhibits you call them but --

Q Identify them by name.

A I reviewed a field audit report dated February 4, 1972; I reviewed the examination No. 2013 and the key, and examination No. 1631, the announcement of the jobs with the City of New York for supervising human resources specialist, and I reviewed and read the depositions of Mr. Rosenberg and Miss -- what's her name?

Q Willingham?

A Yes.

Q You were also present in court during the entire day yesterday for Dr. Katzell and Dr. Williams' testimony?

A Right.

Q On the basis of your examination of these materials, would you first state what conclusions you came to and then I will ask you to explain how you came to those conclusions?

A Okay. I came to three conclusions. My first conclusion was that the alleged job analaysis does not even remotely meet professional standards. I will explain whyin a minute.

Secondly, I came to the conclusion that the

written test was inadequate as a measure of any portrait associated with performance in the job.

Third, I came to the conclusion that there was no evidence for content validity or any other validity of this test.

Q Let's focus on what's been described by some here as a job analysis, the field audit report officially denominated Defendants' Exhibit F. You say you found that inadequate?

A Yes.

Q What is the basis for that conclusion?

A First of all, let me clarify some ideas here. There has been a lot of words used in a rather imprecise fashion that I have heard heard yesterday and today. When we talk about job analysis, that is a very broad term and it refers to four distinct procedures. One is the minute, microscopic task analysis, motion analysis, timetables, done by industrial engineers.

The second type is a work-flow analysis that is usually conducted by systems analysts.

The third is a rather broad, generalized analysis conducted by compensation and classification people for the purposes of slotting a job in a specific salary range.

The last one is what we call work oriented jov analysis, which is performed to determine the human qualifications or the traits required to perform a given job.

In selection we are not measuring the job or an area of a job as I have heard over and over again in the past couple of jobs, we are measuring people and what traits they have to behave in a certain way which we call job performance.

THE COURT: What do you mean by saying in selectionyou do that?

THE WITNESS: In selection. We are not measuring, we are not trying to measure a job area or a job function, you see. We are measuring a person to see whether he has certain qualities, we call traits, to perform in a certain fashion.

So the job analysis that has to be conducted is one that identifies the traits that a person has to have. It is generally agreed in the literature that types A, B and C, the first three types of job analysis, are inadequate for selection purposes, for the design of instruments to measure human traits.

What we need is worker-oriented job analysis, and there are some systems now. One of them was men-

tioned here by Dr. Williams, the critical-incident method. There is work going on for years in Purdue University by a psychologist by the name of McCormick.

I have my own system I use that is a modification of a system used in the federal service by a man named Primoff, a psychologist named Primoff.

So this is what is necessary, and it became crucial in this issue of adverse impact. You have got to begin with worker-oriented job analysis. If you have a fuzzy or an inadequate idea of what is required to do the job there is no way that you can develop an instrument that will measure this.

I also heard that this is an imperfect science. Well, it isn't that imperfect as would be indicated by what I see presented by the city. It is a question of selection strategy, that is what we are after, and this is the issue, as I see it, in this particular case.

Q In what respects does the field audit report, Defendants' Exhibit F, fall short of what you would consider adequate for the worker-oriented job analysis you say is required here?

THE COURT: I will need a copy of this to follow you.

THE WITNESS: I think you might.

(Pause.)

A First of all, in my opinion, the sampling -- and we have heard this was inadequate to sample only, I think it was, four or five positions, and we must distinguish between a position and a job. Every position differs from every other position in some slight detail. A job is a class of similar positions that we can bring together for purposes of pay, training and selection.

Therefore, we have got to sample a number of positions. When I go in to do a study I sample a broad spectrum of positions, not just four or five.

THE COURT: The number that you examine I assume has some relationship to the number of people that will be employed.

THE WITNESS: Yes, that's right.

THE COURT: Or are employed.

THE WITNESS: Well, the number of positions you have and the varying nature of them.

THE COURT: But you mean, taking into consideration the number here, four was insufficient.

THE WITNESS: Yes, it would be inadequate, I think, because -- and it was only limited because of the city's policy. You see, the city has a number of

unique policies that inhibit good selection. This is one of the fundamental problems here. This is one of them, not talking to somebody occupying the job because you may in some way indicate the content of the examination.

THE COURT: What did you do about that in the Port Authority?

THE WITNESS: First of all, we would never let this situation arise. We would never permit anyone to occupy a position provisionally for a year. Three months was the absolute limit and we had to come up with an examination and select before that; just so you would not get this kind of problem later.

And this is not the first time this has happened in the city. This happened in 1953, when I came in, I think there were 10,000 provisionals or more in the city when Mr. Schechter became the first personnel director. But you have the problem now, but you must -- you have these positions, you have to talk to the incumbents to get a representative sample.

So this was the first inadequacy.

Q You will recall Mr. Rosenberg also stated it is indicated on the face of the document and in his deposition and in his testimony that he interviewed supervi-

sors -- that is, superiors to supervising human resources specialists -- to ask them about the nature of the job. Would that in your opinion be an adequate substitute for speaking to the incumbents on the job?

A Not necessarily. Provided they had once performed that job. But we do find gaps between what a supervisor says the job consists of and what the incumbent says, so we always include both, and sometimes personnel people, though we get resistance to that because the supervisors all agree that they don't know what the job consists of.

But we like to get incumbents because they have a view, a perception, and we like to get supervisors.

We also like to observe the job in question, but this gets you into the problem of sampling again because you can observe soembody on a single day and you might not see anything that is critical to that job.

The second inadequacy, and a more serious one, is the lack of any methodology to assure reliability or establish any objectivity or any comparability in this analysis. This is purely subjective and it is rather -- it has a very crude notion in it I will point out in just a moment. I don't really understand what

it is trying to -- what it purports to say or how you can relate it to the traits necessary to perform this job.

But there are, as I pointed out, a number of methodologies that have been developed. Some are better than others. All of them have some imperfections but you do get objectivity. A little later perhaps I can explain it in a little more detail.

The third one, and the most serious one, just by looking at the content of this, which would make anybody concerned with testing or measurements throw up his hands, you get knowledge and skills required, if you look at the bottom of page 2, and you see all sorts of imprecise and ambiguous terms being used.

For example, the one I have here says "Knowledge of." What is knowledge of? What level of knowledge? It just says "Knowledge of functions." What functions? That doesn't tell you anything. You can write anything there and say, well, that's measuring knowledge of functions.

So if you say knowledge you have to define what you mean by knowledge and what the level of it is. We generally have a standard. We say knowledge that would ordinarily be acquired by two years of normal

training.

Then they say familiarity with. We would say what's the difference between familiarity with and knowledge of.

They alternate these terms. What is familiarity with? Is it simple recognition or something like that?

Then we get to words like skills. What kind of skills? Skills in deciding problems or ability to supervise.

Now,we will commenton that one a little later. What's that notion? That is the construct concept.

So you see the loose use of these words just doesn't give you any guide, definitive guide, to develop a measure. To say that these we will measure now in a written test is making a very giant leap forward.

If that were handed to me I would say that this is useless in developing a test plan.

Q As you know from what you have read, Mr. Rosenberg had many years of experience in doing desk audits for the purpose of classification. His testimony was that this was the first audit he did for the purpose of developing a selection device to transfer from one division to another. Do you feel in view of the differ-

ences in those purposes there might have been a problem inherent in that situation?

A Yes, that is the heart of the problem. What the city has been trying to do is adapt a method that was suitable for compensation purposes, where the precision is not really essential, you are just doing some gross classifications of people, and even here some of this is questionable but, you see, to adapt this to the much more precise task or purpose of selection results in a monstrosity.

Q For a selection-oriented job analysis do you need more information, less, or is it just a different kind? How does it work?

A You need a lot more information than is provided here. You need more than just a field audit, observing a job.

For example, if I can give you an example of what I think is a proper way to do it, in constructing an examination for battalion fire chief in another city we went down there and we are the test constructors now, not a third party, but the test constructors went down and we first interviewed a great many incumbents and supervisors right up to the fire commissioner, we spent a day in the firehouse, we went to a fire and we

saw how they handled directly -- very fortunately there was a big fire in the city that day so we were able to get a good example of it.

And then we had them complete a questionnaire called a position analysis questionnaire, which is about 18 pages or 20 pages, and which goes into not only the task but the demands of the job. That is one of the big things that is missing from this and which is a critical factor. Those are the things you have to put up with, the job conditions; working in the cold, working under hazardous conditions.

You analyze all of that. We took the questionnaires and sent them to Purdue where they went through a computer and came out with a profile of what the job traits required to perform that job. With that we now had -- and that was compared to what they had in their computer, 10, 15, 20 thousand jobs. They do it very reasonably because you make a contribution to their data pool. With that now we were able to say yes, one of the factors that has to be measured is the ability to make decisions.

We then said this is the measure we will use to evaluate that.

THE COURT: What do you mean by the ability

to make decisions?

THE WITNESS: The ability to decide, to choose a course of action among several options.

THE COURT: The reason that I ask is because while I think I understand what that phrase means, it seems to me it also hasthe same problems that No. 5 here does, ability to supervise and direct.

THE WITNESS: Yes, you are right, but we defined it, you see, very precisely. There is about three paragraphs.

THE COURT: You are just summarizing?

THE WITNESS: Yes. We would say decision-making ability and then list it.

THE COURT: And indicate what that meant?

THE WITNESS: We listed it very carefully and then the level of the ability, how complex, because a stenographer or clerk makes decisions but they are not of the same order of magnitude or complexity of an assistant fire chief.

So we had to spell that out and develop a measure of that.

But unless you define it precisely you can't develop an instrument.

BY MR. MINTZ:

Q Who were the people who filled out this 18-

page questionnaire? Were they incumbents, supervisors or both?

A Both. And all did it independently without consulting one another.

Q Do you recall in that instance how many incumbents in the job you actually interviewed or submitted the questionnaire to, or both?

A Well, I estimated all told maybe 40 or 50 people.

THE COURT: How large a pool?

THE WITNESS: I am guessing, but I think in this city they had about 100 battalion chiefs.

THE COURT: So that would be a pretty substantial percentage, a pretty substantial sample?

THE WITNESS: Yes.

THE COURT: Have you got an opinion as to how many incumbents you think should have been reviewed in this situation here?

THE WITNESS: We have a strategy for determining that. We just don't guess.

THE COURT: Would you tell me what your strategy is then?

THE WITNESS: You develop what we call a job matrix, you see, and we determine -- and that is

determined by location and by type of work, and then how many are in each of these, and then we would take a 10 per cent sample or something of this sort. So it could depend.

One of the important things we do with this is that we can then measure the interrater reliability. If we get a very low reliability -- in other words, if they agree, this is the function of the independent judgments and they agree. If you don't get agreement we call them back and say something is happening because we find frequently that jobs with the same title are quite different, but that for compensation purposes they give it a label, but they require much different traits.

Sometimes we find jobs with different titles are the same. So this is the process of discovery that is so crucial to develop an adequate selection strategy, and that is what I think is required by the guidelines. At least that is what is intended.

Q Just for clarification, when you say "we" do you mean that a team of people perform the job analysis or was it yourself?

A No, it is a team. You also have time, and we want more than one person on our side involved

in it. Just a single person would introduce a great deal of the subjectivity into it.

Q If only one person is doing the job analysis there might be an introduction of biases which wouldn't be corrected by others?

A Yes.

t6 am

Q You mentioned you don't think it conforms with the guidelines. What were you referring to?

A The proposed guidelines which require an adequate job analysis where there is an adverse impact.

Q Proposed federal uniform guidelines?

A Yes.

This was the critical issue in the AT&T case. They had no job analysis.

Q Those guidelines are the ones presently being worked out between EEOC, U.S. Civil Service Commission, Office of Contract Compliance and Department of Labor?

A Yes.

And they have been reviewed by the municipal and state agencies, public agencies, too, who have objections to them.

Q You are familiar with the presently existing EEOC guidelines, also, I assume?

A Yes.

Q Is your conclusion the meaning of job analysis as it appears in that analysis the same?

A It has been clarified because of the fact in a number of cases rather inadequate studies of the job have been submitted as meeting the requirements of the present guidelines is to spell that out in more detail

as to what is an acceptable job analysis.

Q How many occasions have you had to construct an examination for selection to a particular position?

A Innumerable. I would say over a thousand.

Q Do you feel that you could construct an adequate examination on the basis of this job analysis? And you have also seen, I believe, the test plan, the document which gives the traits and the percentage weights?

A Yes.

Q Do you feel that you could construct an examination from that information?

A No, I couldn't.

Q Why not?

A Because it doesn't give me any indication of several important pieces of information. The first is that it doesn't tell me what are the actual traits, what is it that a person has to have within him, you see, to perform the job effectively, which are critical. In other words, without that ability or adaptability I couldn't perform the job at all effectively.

Third, I need to know the weight, the relative weight of the different traits that are required. This is another area in selection that you overemphasize one trait and to the exclusion of another which may be the one that

makes the greatest contribution to the job.

For example, take a telephone operator. If you can give her a mental ability test, as was done by the Telephone Company, and it did predict success in the training program, but that also predicted turnover. In other words, the brightest person, the people who got the highest scores on that test, they did well in the training program but they had no adaptability to the working conditions on the job and they quit, and so the company had a very high turnover.

Had they emphasized adaptability to repetitious, fairly monotonous work, they would have had stabilized the job and still had people who could have performed it effectively.

Q The field audit report purports to give weight to the various factors by the portion appearing at the top of page 2 which lists things that are done on the job and then by number indicates which skills are relevant to those things. This is further translated into percentages on the test plan.

Why does thatnot, or is that not adequate?

A It isn't adequate because, first of all, I can't figure it out to start with. That doesn't mean it is inadequate , it may mean I am, but certainly ought to be

clearer than that. He says through the interviewing learned about negotiations for funds to permit on the job development of disadvantaged residents of poverty areas of New York City, and then he has numbers after it, one, two, three, four, five and eight. Presumably these are the knowledges and skills required to negotiate these funds.

I am assuming then that in some way he collected the number of times No. 1 was required and assigned that a percentage in his test plan, and that is a pretty rough approximation of an analysis.

As I said, I am not sure of that because I don't think the percentages add up then, so I really don't know how they came out. I have seen nothing to show me how they came to the conclusion of those percentages or arrived at those percentages.

Q Assuming that in fact it was a simple matter of counting the number of times each of those traits was necessary to perform each of the tasks found in the job, would that be adequate?

A You can do a frequency analysis, the frequency with which something is done, but it might be something that is done frequently that you don't even have to test for because everybody can do it. For example, you may find that a person, the thing they do most frequently is answer

the telephone, but almost anybody can answer the telephone, so that is not a critical factor.

It might be what they say to certain people who call which becomes a critical factor, so frequency by itself is not sufficient to develop a test plan.

Q How about the fact -- take the example you used, negotiate for funds. There is no indication of how often a supervising human resources specialist negotiates for funds. Does that create a problem?

A Yes, that does. And also what do we mean by negotiate for funds? What specifically are you doing here? That is what we are after. Because a lot of people can say they negotiate because they participate in the negotiation, or they participate in the discussion. There are different degrees and levels of negotiation.

Q If you in conducting a job analysis were to find that the people you are trying to select in fact do have to engage in negotiation for funds, how would you go about identifying the traits that they need to successfully perform that test?

A Well, I don't want to go into a long, involved, technical discussion here, but you have to have some preconceived plan, some established way of taking a test and breaking it down into certain traits that are necessary

for job performance, and then those traits or constructs, if you will, would be whatyou would measure and you would develop the measures for that.

So it is taking a job function -- and this is a function here, a task to negotiate funds -- and then determining, well what does it require in the way of human traits?

We can say, well, first, it does require speaking ability, but it might require a ~~toierance~~, it might require influence, and many other traits that you could name. Each system has its own approach to this, its own terminology.

THE COURT: To some extent isn't that what Mr. Rosenberg was doing?

THE WITNESS: Yes, in a very rough way he was attempting to do this.

THE COURT: The ones, twos and threes, meaning this quality or whatever you want to call it is necessary in regard to this function, in his opinion.

THE WITNESS: All I am saying is that it is so crude --

THE COURT: I must say I do understand the difference between the depth of your approach and the way he testified that he did it. I just wanted to understand if

it is qualitatively the same approach.

Q Was there anything else that you felt was relevant to the job analysis to suggest its inadequacy, the field audit report?

A No, I think I have covered all the points I want to make.

Q You also stated you examined the tests themselves at issue here, 1631 and 2013, which are identical except for the last ten questions. What were your conclusions about the test and what was the basis of those conclusions?

A Well, overall I felt it was a bad test. If it had been submitted to me for approval I wouldn't have approved it. Just from the standpoint of construction. It has many, many -- and it was pointed out yesterday there are many inadequacies, and this is a question of relativity.

First of all, it is a multiple choice test, and a multiple choice test in itself is subject to severe limitations that have been written up in the literature. If one is to write a multiple choice item you have got to have a great deal of expertise and you have got to do a good deal of research if you want it to be effective and working for you.

One of the principal problems with a multiple

choice test is that it tends to penalize the expert as much as the incompetent. When you read these, as I did, without looking at the key, trying to select the right answer, I in 24 out of 25 questions picked the answer that I knew the examiner was looking for, although I could see in almost every question another another that was either better or as good as.

Q Do I understand you administered this test to yourself?

A Just the 25. The reading comprehension and the graph.

THE COURT: How did you do?

THE WITNESS: As I said, I had almost a perfect score.

THE COURT: On the basis of your being able to guess what the examiner was looking for?

THE WITNESS: I know what the test constructor is doing, and why certain items are in here, and so forth.

Now, you raised the question, you see, and the question has been raised here, well, it is impossible to tell in advance how effective a question is. That is not so.

The City of New York is unique in several ways because there is a peculiar set, mental set here in the city both on the part of those who take the test and those

who administer them, and all they are concerned about is what the judge will say, because they assume that almost every examination is going to go to court.

So when you talk to a test constructor --

THE COURT: Why don't they show it to me ahead of time? It would save a lot of trouble.

THE WITNESS: That is right, it would. So they are concerned not about the validity of an item but whether it will stand up in court when in the cross examination somebody takes and looks at an item and says I think this will be the right answer. And I spent many hours, two days on the stand, defending seven questions that I didn't write.

One of the problems therefore is they cannot verify their items in advance, but others can do it. For example, we develop what we call an item file.

Q Incidentally, before you go into that, was there any particular basis you had for that feeling that the city's exams are largely based on concern for protecting them from attack? Did anyone say that to you?

A In conducting an oral for chief examiner a few years ago I asked what is the characteristics of a good test, and he said "No appeals."

Q Who was that that said that to you?

A I won't mention his name.

THE COURT: The Corporation Counsel.

THE WITNESS: I didn't hear that.

A And so, also because of this fact I have been caught up in it myself and I don't blema ethem in a sense for being concerned about this, but does he destroy the validity of the test, and it inhibits their ability to innovate, to come up with new ideas in testing. They have done some.

THE COURT: I understand why you believe that a concern about the conformance with the legal standards as the Court's see it, let us put it that way, on the part of the city may have a distorting effect, if that is really not what you are testing for, but I don't understand what you mean when you say it is not possible for the test to be tested in advance.

THE WITNESS: That is what I am going to show, that it is possible. But they don't do it as a matter of policy.

THE COURT: That is just a matter of policy?

THE WITNESS: Right.

THE COURT: You weren't connecting that with the fact that they were trying to avoid unsatisfactory litigation?

THE WITNESS: Yes, they are, Because, you see, they have to -- they suspended this policy for a period of time, but once the test is administered they have to give the

test to the people who took it to study it, and that means of course that you cannot reuse those items, you see, and they are so cautious about this they wouldn't do any pre-testing. They wouldn't pretest it. They are afraid somebody who failed the test would allege that one of the persons leaked the information of what was on the test.

THE COURT: I see.

THE WITNESS: They say it will violate the security of the test, and so they go to great lengths to maintain that security.

THE COURT: Of course that is an important consideration.

THE WITNESS: But it is not an insurmountable one.

THE COURT: Good. Let us hear how.

THE WITNESS: Well, first of all, what a great many public agencies do is they maintain item files that measure various traits, areas of knoweldge. We had them. We had a file of some 15 to 20,000 questions that we collected from all over so that the test constructor after he took his test plan could then go and pick out items.

He would go to a file, and on that card it has this kind of information about the item -- when it was used last. And we had a policy that you couldn't use an item if it had

been used within the past two years or something of this sort.

Secondly, for whatjobs it was used.

Third, we had some of the information that we saw yesterday, the item tally.

Now, tnat is where we get the discriminating power of the item, which is the coefficient of correlation. You get the 25 per cent and how they did, and the bottom 25 per cent and accrue a set of tables. I could have done that for this document here, this item tally, I think using Flannigan's tables in a half hour.

We had standards for that. We would say that if an item did not have at least the correlation of point 30 we restricted it becauseit was not discriminating. Then the second thing we had is the item difficulty, the percentage of people who selected the right answer.

Now,you asked that question yesterday about what standards. We had standards. If an item was answered correctly by over 90 per cent we rejected it. It was what we would call the who will miss it question.

If an item had only 10 per cent people getting it correct we would reject it. We would only permit the test constructors to use a small number of items ranging in difficulty between 80 and 90 and 10 and 20.

We tried to get a difficult level of somewhere in the 60s for the test. So this is the way you prepare a test.

THE COURT: I think Dr. Katzell testified about the desirability of having some questions purposely more difficult than others so that you could produce this spread that you want for civil service lists. Do you care to relate your theory about not having questions too difficult or too simple.

THE WITNESS: You could have test items of the same level of difficulty and you will get a spread because you are presuming in your applicant population there is a spread distributed. It may not be distributed normally, it probably shouldn't be, but nevertheless I don't think that is a concern.

By giving easy items in the early part of the test we were sort of giving the test taker a chance to allay his anxiety and natural tension. We also had some difficult items in there to give a premium to those who were better, who knew more than the others, so we varied them. But we tried to get an average level of difficulty for that test, and that is one of the measures that when a technician brought an examination in for approval I would look at that.

THE COURT: Excuse me, I interrupted you when you

were talking about the question of difficulty.

THE WITNESS: As I say, this is some of the information that would be on that card. So even if you were not able to do some of the predictive or concurrent validity studies that are desirable in public service selection you can use, you can construct the test made up of items that are very effective and that have been used before and you know what they are doing, you find out whether there is an option that is misleading or confused or is equally correct, and this makes test construction much simpler.

As a matter of fact, I had a contract with ETS to put this all in a computer at one time. Therefore, it could be done.

Then after the test is over you can easily validate it, you can collect data on it. I have done this many, many times. You can get predictive validity and you can also get item validty in this way, so that you knew what was going into that test, you knew what it was supposed to measure and you knew with what effect.

THE COURT: How would you proceed to validate it after the test was over?

THE WITNESS: There are two ways of doing this. One way is to obtain performance evaluations at the time persons are taking the examination. In our procedure

and in other jurisdictions that is done automatically because performance evaluation is part of the examination.

THE COURT: Are you concerned about the problems that Dr. Williams raised in that regard this morning?

THE WITNESS: They are not serious problems. They are problems. He points them out. They are not such as to deter. There are ways of overcoming them. I feel I have a way I was using the University of Chicago they use a different method, but we do it all the time. That is one way of doing it at the time of the examination, because that gets you away from the contamination problem he refers to, that the greatest judgment would be contaminated by knowledge of how you did in the examination.

The second way is the follow up six months later, and I have done that, and I haven't had any serious problems of contamination at this point.

This could be done. You see, these things are possible and are being done in other public jurisdictions, and in my opinion with the current legislation and so forth they will have to be done.

Q Are there other public agencies that you are familiar with which in fact don't release their tests and are able to review items and are able to review their items in that way?

A Are their public agencies?

Q Yes.

A Yes, the State of Michigan does it. I know California. And of course there is a service you can subscribe to, the Public Personnel Association has a test service for a lot of small jurisdictions, and they will send you items. I never use their items because they appear on so many tests all over the country that they get abused, but they are used. I didn't originate the item ifle concept by any means.

THE COURT: Dr. Lopez, would you mind if we went to lunch at this time.

THE WITNESS: I would be delighted.

(Luncheon recess.)

AFTERNOON SESSION

2:00 p.m.

THE COURT: I just thought I would tell counsel I brought a new book of paper, but I hope I won't have to use it all.

F E L I X M. L O P E Z, resumed.

DIRECT EXAMINATION CONTINUED

BY MR. MINTZ:

Q Dr. Lopez, when we recessed I recall we were discussing the examination itself which you indicated you found to be -- I won't say invalid, that is a technical term - but you didn't find it to be a good test?

A I thought it was poorly constructed.

Q Poorly constructed?

A Yes.

Q What additional factors did you find about the test itself? You said, among other things, you administered a portion to yourself, and you got the right answers by your own estimate of what the examiner was looking for. Do you feel that someone with less knowledge of the workings of test examiners in general and examiners in the City of New York, in particular, might have more problems with those questions?

A Yes. I think that the examinee is faced with the difficulty of trying to understand the point of the question, what the test constructor is trying to get at.

Then, of course, you know, in constructing a multiple choice test, you have got to have, of course, the correct answer in there; and then you have to have other options or alternatives that are plausible but incorrect.

There is no sense in putting in three, you know, totally false answers because almost anybody can perceive them.

So this puts the onus on the test constructor to make those other options that are wrong plausible.

If he uses the system which the City uses of giving, of having only one right answer in the four and no other -- there are other ways of doing this, of course, but that is their system -- and so, as a consequence, in looking at these questions you have to carefully read it, and sometimes the language is vague in itself, so that you may misinterpret it, and though you may know the answer, you might select a wrong alternative.

For example, take Item No. 2 here, one of those. It says: "Of the following the situation in which a supervisor would have to make the greatest effort in order to

communicate effectively with his subordinates would occur when", and the correct answer is "(a) There is a large gap between the supervisor's background and experience and that of his subordinates."

Well, what is a gap? A gap between what background and experience?

Now, I would say you could make a good case for (d) "a supervisor has been with the organization for a much shorter time than most of his subordinates."

He would also have a great communications problem, and having taken a look at the item tally, which I saw later, that 35 per cent of those scoring at the top did choose (d) as the answer, and they were marked wrong.

THE COURT: Why did you choose (a) instead of (d)?

THE WITNESS: Why did I?

Because I felt that was the point of the question that he was looking for.

But if I were to review that on appeal I would give credit for (d) too. I would say both are equally correct.

Q Would you say (a) is what might be called the textbook answer?

A Yes, I think that is what the current literature

says; this is what we are teaching about supervision today. I am sure that the constructor of this has a textbook and a page number for this question. They are generally required to do that, to have an authority for each of these, though oftentimes they say many management experts. You have to substantiate that, what is a management expert and how many is many.

THE COURT: That is one of the things that I don't quite understand, Doctor. I do, of course, agree with the implicit assumption both in Mr. Mintz' questions to this effect and what you just said, that it is desirable that the introductory statement of these questions should be true. For obvious reasons it is desirable that it should be true or authoritatively stated. But with regard to the question of whether or not the answers are appropriately related to the kind of work you are doing, and so on, doesit really make much difference whether you take a hypothetical statement or one that is not necessarily authoritatively supported, as distinct from -- well, I mean, if you were to say "assume that," would that be so bad?

THE WITNESS: No, that would not be so bad except that someone would challenge your answer, and so if you were to just leave out that business of assuming, or, as they do, they generally precede the question with a state-

ment which not all test constructors do, but they do that because they want to be able to cite, to defend that item in case it is challenged.

But it is as a consequence of that that I am maintaining that this puts an unnecessary burden on the examinee in trying to respond to that and a very knowledgeable person, for example, may be confused because he knows a lot about the research in this particular area, and it is not that clearcut.

For example, the question I missed is the one in which I have written two books, and I have taught courses for eight years --

THE COURT: That happens with me in crossword puzzles. I can never get the legal ones.

THE WITNESS: But No. 15, on interviewing, there is no right answer there, because, first of all, they don't tell you what kind of an interview, and you have to define the interview, and it depends upon the type of interview, because, again looking at the tally percentages, you would expect that you would get a pretty even distribution across all four answers, and, as I recall, that is approximately what was obtained.

So this is my criticism, I would say, of the test. And when you have a number of weak items, the discrimin-

ability of the test and its validity is going to go down considerably. It lessens its reliability because it introduces a large error effect.

If you have a large error effect, then you can't get validty of any kind.

So that is my criticism there.

Secondly, of course, the test is attempting to measure knowledge of; it never measures skill in.

We addressed ourselves to this question somewhat in previous testimony.

Taking those first 25 questions which I assume are designed to measure "supervisory skill," well, aside from the practical question of even defining what supervisory skill is as a construct, defining it, the problem of measuring it in a written test, I don't think it has been solved adequately.

I have conducted a number of studies of highly standardized tests of supervision developed by National Test Publishers, and I have never been able to validate it.

As a matter of fact, it seems to me the higher score you get on these tests, the poorer supervisor you are.

THE COURT: May I ask you this: If you had the responsibility of making up a list of people who were

supervisors or wanted to be supervisors, how would you test them other than by a written test?

THE WITNESS: Well, you would use -- I would use different methods. I have used and do use other methods.

Dr. Williams mentioned that one would be a simulation. One method is what they call the group interaction test, or group oral performance test where they are actually placed in a leadership situation.

THE COURT: For a certain period of time?

THE WITNESS: Yes.

This is being done in the federal government now and in industry, they have developed what they call assessment centers, and they bring people in and they put them through 2-1/2 days of assessment in various situational exercises, and from that you can infer whether a person has these qualities or not.

THE COURT: It is quite a job to try to do it with regard to 1100 people, isn't it?

THE WITNESS: Not impossible, though. It just requires a number of examiners. It is the numbers. It just means you need money, that's all.

THE COURT: Yes. That is a problem that I get acquainted with from time to time.

BY MR. MINTZ:

Q Well, let us focus on that problem: You are hiring people through this test for a job that pays in the neighborhood of $15,000 a year -- the salaries are in evidence, I don't recall exactly what they are -- and people usually have the job for several years, and you are investing a substantial amount of money in this person, in your experience is there a value to spending more money in your selection procedure, maybe even hiring fewer people because of it, but getting, therefore, better judgment as to who is most competent to do the job?

A Yes, and it makes good business sense.

I am about to put something like 5,000 managers through a aprocedure next year, and the company feels it is a very, very worthwhile investment to do this, not only because of the salary but the effect on this organization and the management of this organization which would ensue from that.

And interestingly enough, performance on such exercise as that does not correlate very well with performance on one of these paper and pencil exercises.

THE COURT: Do sentence completion tests have any value?

THE WITNESS: That is a clinical technique that

is used mostly in individual assessment, in personality evaluation. But I would not recommend it in a competitive selection system.

THE COURT: Thank you.

BY MR. MINTZ:

Q You said also in addition to the first 25 questions which were in a field in which you had particular expertise, you also focused on the reading comprehension and, I believe, the math questions.

Did you have any particular judgment as to them, the reading comprehension?

A Well, the reading comprehension test, I don't know it was introduced, because the whole test is a measure of reading comprehension, and I am sure that if you took those items and correlated them with test performance there would be a high correlation.

You will also notice they did not discriminate very much, and one of them was a vocabulary question, not really a reading comprehension question at all.

Q In other words, most people got that right?

A Yes, most people got that right, but if they were going to test vocabulary, you have got to do it with more than one word. I mean, if you just give a person one word, there is not much you can infer from that.

Q Is what you are saying, then, that if a person could adequately read the other 75 questions in order to answer them correctly, you are not learning anything more about him by asking him five questions to interpret what is in the paragraph?

A That is right. Unless you know for certain that reading comprehension is an important component of the job and has a real effect upon job performance, then I wouldn't use it at all if you're measuring it by written test.

I know it is a favorite device of test constructors because they are easy to construct, and they fill out the test for you, but actually I don't think, without having seen the data -- my experience has been that it does not contribute much to the variance of the test.

Q There has been testimony here that reading comprehension is important to this job.

A Well, there has been testimony as to that but there has been no data offered to show that. For example, it is a question of reading comprehension and reading speed, and what level of reading -- we went into that yesterday -- that there are ways of measuring the content that is required and I know in another context, for example, there are a lot of reading improvement courses that presumably will increase your efficiency.

None of the studies that I have conducted have shown that improvement in reading comprehension contributes anything to job performance.

Q Assuming that testimony that reading comprehension is important to this job could be borne out by a real measurement, would your judgment about the reading comprehension questions still be the same?

THE WITNESS: Would you repeat that question?

Q Well, you stated that at least one of your objections to the reading comprehension questions is the lack of any real demonstration that reading comprehension is essential to this job. I am focusing on a particular reading comprehension question which was five items on this exam.

Would you still consider that a necessary item if it could be proven?

A In practice what I do, if we analyze it and we find that reading comprehension as a function of the job is relevant and important, then we can assume that we are measuring that with the test itself.

THE COURT: At least in this test?

THE WITNESS: Yes, this type of test, making certain that the reading comprehension or the reading level in this is the same as in the job, then that would be the measure

of it.

Q You heard Dr. Katzell's testimony yesterday about there being ways in which you can measure the difficulty of written material that one reads on the job and the difficulty of written material one might put into a test.

Would that be a recognized procedure to make the test more or less difficult to read than the material a person has to read on this job?

A Yes, that is exactly what we do. I think Dr. Katzell is referring to the Flesch Formula, Rudolph Flesch, who is another Columbia graduate, and Professor Irving Lord, who really did the pioneer work in this field, but we measure that, and we make certain, and we say, is it the level, if you will excuse me, of the Daily News, or is it the level of a publication like a scientific journal, or something like that, and you can measure it precisely.

Q You also, I believe, had some particular conclusions about the math and graph questions here.

A Well, I felt -- and this is an opinion; I don't think it is a very important one - but I felt that it was really not a measure of ability to read an interpret graphs. It seemed to me it was more a measure of arithmetic, at least as I took it, and also reading comprehension.

Q You say, through your study of this material in conversations with me that a number of people who were performing the job in fact were unable to pass this test.

Does this knowledge suggest anything to you about the validity of the examination?

A Yes. As a matter of fact, it was the first question that I asked you, because, you see, I think that so far what we have been talking about is content validity, and in my opinion all this test possesses -- and I haven't heard this phrase used so far -- that really what we have here is face validity, that it looks like it is about the job; and you can do that in many ways, give it face validity, but that is not the same as content validity by any means. You just put it in the language - you test in the language of the job, and it is a good thing to do. It eases the applicant's mind somewhat, but it doesn't contribute much to the predictive power of the test.

Now, the second question - and the way in which we begin to validate a test is by givingit to people who are performing the job effective, and in my system we then establish the cutoff point as the lowest score achieved by somebody who was perfcrming effectively, because by definition that person has the skills and the abilities and the adaptability to perform the job successfully.

So that when you come down to this question that here are people who for two years have been performing effectively, and they fail the test; in other words, they didn't get 70 per cent - and that is an arbitrary figure; that is just picked out of thin air and has no meaning, except perhaps in law, but it has no meaning -- but then to say that these people are failures on the job is utter nonsense.

So that you would say not that they are inadequate performers but that there is something wrong with my test.

THE COURT: Doctor, yesterday I think it was Dr. Katzell, but, anyway, one of the defense witnesses said that they did not in their opinion regard the fact that you didn't get 70 on this test as meaning that you are unsatisfactory on the job; it was simply, as I understand it, that those who were doing the hiring, namely, the Civil Service Commission, found enough people with 70 and above, and they were required by law to take those at the top of the heap.

So, theoretically, you could have had, I suppose, out of the 1100 people who took this exam, there may have been possibly 800, 900 or 1,000 who could do the job, but there weren't 800, 900 or 1,000 positions.

Isn't that a meaningful possibility?

THE WITNESS: Well, if you're saying now that the purpose of the test was to determine not only whether a person was qualified or not but who was better qualified --

THE COURT: That is what I understood the defense witnesses to be telling me.

THE WITNESS: Well, that is an unusual procedure here,particularly in -- I am not here to discuss the equities of that situation, because in common personnel practice a person who has been on the job for two years, you have a moral obligation to that person, and if they established that they are qualified they should get preference over any outsiders, and I think the City does buy that concept because of promotion examinations --

THE COURT: Yes, I think in one of Mr. Mintz' questions yesterday, it was not challenged that if anybody had gotten 70 on the promotional exam they would have outclassed anybody who got a higher grade on the open competitive exam; is that right?

MR. MINTZ: Yes.

THE WITNESS: But that is not what they are saying. They are saying if you are below 70 you are not qualified.

THE COURT: I understand what you are saying now too.

THE WITNESS: And that is where the error is.

So, therefore, you see, you don't need -- Dr. Katzell referred to the distribution of performance rating, to do what we call a product moment correlation where you assume that the variables are both normally distributed. You can do many other kinds of analyses and come up with validities that are based on what we call non-parametric methods, just a business of pass, fail, or successful or unsuccessful on the job, and we use these methods in validating tests in private industry.

So I would say that the very fact that they are now contending that a number of people who have been performing successfully on the job will -- well, you have either got to say that there is a mass conspiracy among the supervisors to keep a lot of unqualified people in office, or we have got to conclude that the test as it was administered is invalid on a criterion basis.

To me there is no other conclusion.

THE COURT: If they were honestly rated before, then there was something wrong with the test?

THE WITNESS: Yes, honestly. In other words, I would find it hard to believe that so many -- in a single case, if it is a single case, I can understand, but if it is so many, I would find it hard to believe, and I would say that a private employer would have a hard time convincing

a court that that was so, that these people were not performing, particularly when you had the option of dismissing them for incompetency at any time without any recourse or redress.

So therefore I feel that is the most damaging thing of all, the fact that so many people performing this job were disqualified. I think it was very bad personnel practice too.

Q Your final conclusion stated at the beginning of your testimony was that there was no case for content validity in connection with this examination.

Is there anything further which you feel buttresses that conclusion in addition to the specific things you said about the job analysis and the exam itself?

A No, I can't think of anything else. I think I have presented my perception of the situation.

MR.MINTZ: I would like to have these two documents marked.

The first is a field audit report, and the test plan for the position of human resources specialist, dated February 4, 1972, prepared by Mr. Rosenberg.

The second is field audit report and test plan for the position of senior human resources specialist,

same date, same preparer.

(Plaintiffs' Exhibits 8 and 9 were marked for identification.)

xxx

BY MR. MINTZ:

Q I believe you have seen those, at least briefly?

A Yes.

Q I refer you to the second page on Exhibit 8, and it continues over to the third page where there is a list of qualities purported to be needed to perform those two jobs.

Do you see the point I am referring to?

A Yes. The knowledge and skills required ? Is that it?

Q Yes, exactly.

A Okay.

Q Do you notice any similarity between the knowledge and skills listed there and those listed in Defendants' Exhibit F, which is the field audit report on the examination here in issue?

A Well, they are virtually identical.

Q I refer you to the last page of Plaintiffs' Exhibit 9, the test plan for Senior Human Resources Specialist.

I would ask you to compare that with the test plan

which is Defendants' Exhibit G in evidence, and which you also have, which we had sent to you previously for the test here in issue, the supervising test.

A I have it, yes.

Q Do you notice any similarity there?

A Yes. They are virtually identically worded.

Q How about the weights?

A The weights vary to some extent, slightly; 5 per cent.

Q Isn't it a fact the only variance, inclusion of one 5 per cent item on office machines and related factors on the supervising test which --

A No. 1, functions of HRA -- oh, between supervising and senior?

Q Yes.

A Oh, I was looking at the lower level job too, specialist.

Yes, you're right, the only variance between the two is on machine equipment, 5 per cent, and arithmetic computations is 15 per cent on senior and 10 per cent on the supervising.

Q If you were a person asked to develop two tests, based on those two tests plans would you have any way of developing two different tests?

A Only to a very minor degree. You know, I believe this machine equipment and supply, I might put a few items in there that I wouldn't include on the senior human resources specialist, and I probably would reduce the amount of arithmetic computations and interpretation of tables and charts on the supervising.

Q Otherwise they would be identical?

A The same test because the job analysis said these functions are identical.

THE COURT: But if the job analysis is correct it wouldn't be surprising that the tests would be almost identical, is that correct?

THE WITNESS: Yes.

THE COURT: The question is whether the job analysis is correct.

THE WITNESS: It is quite possible the two jobs, different levels, in some areas could require the same traits. You see, that happens all the time. It is something else that accounts for the difference in level and the complexity of the position.

Q Would there be any way on the basis of those test plans on which a test constructor could determine that an easier or harder question should be put on one exam or the other?

A No, there is no basis for doing that. That would be injecting the test constructors own opinions into the test plan.

There is also, as I pointed out to you earlier, in this test plan a great deal of latitude for the test constructor.

Q Dr. Lopez, would you be able to come to any sort of conclusion with any reasonable degree of certainty about what this test does, in fact, measure?

A Well, I would assume -- first of all, it measures reading comprehension at some level, and fairly abstract at that.

Secondly, it does show familiarity with literature on management practices and some behavioral science concepts touching on management and supervision.

It also measures knowledge of certain topics and agencies, and so on, that would deal with the work of a human resources specialist.

Q Would there be any basis,in your opinion, from your examination of these materials and familiarity with the facts here for determining whether someone who had this knowledge to enable them to correctly answer those questions would, in fact, be better able to do the job at issue?

A Well, based on my experiences with this type of examination, I find that it will contribute very little to the prediction of performance in the jobs for which it is being used. We find that this type of test rarely correlates very highly with any index of performance.

Q Is there any other purpose psychometrically or from a personnel expert's point of view for giving an employment test other than to try and predict as best you can effective performance on the job?

A No, there is not any other reason for doing it.

Q Finally, there is in evidence here, I am sure you have heard, that people who took this test had widely varying educational backgrounds, from high school equivalencies and, in some cases, perhaps lower, to graduate degrees.

Do you feel that formal education would affect performance on this examination in any way?

A Well, I would assume that a person who is college trained would have had much more exposure to tests of this sort, and would be more test wise, and therefore, they would perform better on this test than those who had not had much exposure to testing, which is one of the things we have learned in schools, how to take tests.

But other than that, I don't think that the person's

background experience would have much effect on this.

Q What do you mean by test wise? Is that a professional term?

A Yes.

Q What does it mean?

A Well, there are two tasks when you take a test, and one is learning how to take the test; in other words, following instructions, the type of thing Dr. Williams was referring to yesterday and this mroning as part of the content validity.

If you give complicated instructions that may be the real test, just to find out how to take the test; and so when you repeat a test, you give a test to a person two or three times, their score usually improves because they know how to take the test.

So in taking multiple choice tests in particular, there are a lot of rules you can follow, and a person who has learned those rules, that system, can many times get a fairly impressive score on a test about which he knows very little.

MR. MINTZ: I would like to introduce Plaintiffs' Exhibits 8 and 9 into evidence and that will conclude my direct examination.

THE COURT: I think there is no objection?

MS. OMANSKY: No.

THE COURT: All right, Plaintiffs' Exhibits 8 and 9 for identification are received in evidence.

(Plaintiffs' Exhibits 8 and 9 for identification were received in evidence.)

xx

CROSS EXAMINATION

BY MS. OMANSKY:

Q Dr. Lopez, do you know Dr. Richard Barrett?

A Yes.

Q Would you regard him as an expert in the field?

A Yes.

Q When was the last time you worked for the City of New York?

A I think it was January or December 1973.

Q December 1973?

A Yes.

THE COURT: January or December 1973?

THE WITNESS: No, December 1972 or January 1973, right in that period.

Q Did you get paid?

A Yes.

Q And the time that you worked for the City and accepted money, were you as unhappy with the city's personnel policy?

A Yes.

Q But you did the work nevertheless?

A Yes.

Q We will get into that in a moment.

Did you pass an examination for the diplomate?

A Yes.

Q What kind of an examination was it?

A Oral.

Q It was an oral examination?

A Yes.

Q Entirely oral?

A Pardon me?

Q Was it entirely oral?

A Yes. They waived the written.

Q They waived the written for you?

A Yes.

Q Why did they waive the written for you?

A Well, I think they were waiving it for a number of people who had extensive experience.

Q Sort of a grandfather clause?

A No, not grandfather. The grandfather diplomates were automatically given a diplomate.

Q You had to take an oral?

A I had to submit a research project that I had done,

and then I took an oral.

Q For people for whom the requirements were not waived, did they take a written test?

A Some had, yes. Yes, if it were not waived.

Q They would take a written test?

A They did. I am not sure whether they still do. There was a lot of unhappiness with the written test.

Q You are not sure that they still do?

A No, I am not sure whether they dropped the written test. They may still require those who are very young with little experience to take the test.

Q Those people who are very young with little experience who were required to take a written test, what would that test be testing for?

A They would test knowledge of psychology, principles of psychology.

Q What traits does it test?

A Knowledge --

Q Knowledge is a trait?

A No, no -- knowledge is a trait --

Q That is what I said, knowledge is a trait?

A Yes, so they would be testing craft knowledge, knowledge of various information that would be required to perform as a professional psychologist.

Q This would be knowledge of the principles of psychology, I suppose?

A Yes.

Q Would knowledge of other areas be a trait that you would test for?

A Well, knowledge -- we are talking about a trait that is known as craft knowledge. That is one human trait, the possession of certain knowledge that you have.

t2pm 1 mdal Lopez-cross

2 Q Is craft knowledge restricted to a profes-
3 sional or does it apply to everybody?
4 A No, no, knowledge of his craft, you see.
5 Q His craft?
6 A Your craft knowledge would be different,
7 you see. Yours would be knowledge of law.
8 Q Right.
9 A Okay. So if you want to say that is a dif-
10 ferent trait, you can, but I am generalizing and
11 calling all these craft knowledge, and we require you to
12 specify what that knowledge is that you must have.
13 Q I assumed that the knowledge you require as
14 a lawyer is different from the knowledge you require as
15 a psychologist?
16 A Right.
17 Q It's knowledge in the area, right?
18 A Yes.
19 Q Craft knowledge doesn't add anything to your
20 explanation, does it? I mean is it reasonable to test
21 for -- to test me on principals of psychology? In
22 other words, when you are giving a test for knowledge
23 to add the word "craft" knowledge doesn't really add
24 anything, does it?
25 A It specifies the type of knowledge we are look-

ing for, you see, because knowledge can be general. It includes the whole universe.

Q I suppose most tests that test for knowledge test for craft knowledge?

A No.

Q No?

A No.

Q Do doctors --

A Now you say if it is a test to predict performance in an occupation, that's right, but there are many tests of English literature and many other things.

Q Is that a test of knowledge?

A It is a test of knowledge but not craft knowledge.

THE COURT: Unless you are an English professor.

THE WITNESS: Yes.

Q When did you agree to testify in this case?

A Pardon me?

Q When did you agree to testify for the plaintiffs in this case?

A I am trying to recall. I believe it was in October. Because then I forgot about it.

Q Did you agree when Mr. Mintz called you up and asked you if you would testify? Did you agree then?

A Yes. He called me and asked if I would testify in this case, and I asked him who it was. I should have perhaps elaborated on this a little bit this morning, because I have often been called to testify and I never accept a case for a plaintiff in a civil service examination because I have only testified for the city, but I never testified for a plaintiff because I don't believe in the system of taking -- of appealing a test to court except in a civil rights matter.

So in this particular instance I wavered a bit but I felt that this was an opportunity to make a constructive contribution to the field of public personnel selection.

Q Would it be fair to say your only consideration when Mr. Mintz called you on the telephone was basically this was a civil rights case and it wasn't against the -- the only qualification you mentioned, that was your only consideration?

A Well, I assumed that the situation, the issue would be one with which I am very familiar and have discussed at length with a great many people in the field, but

I always reserve the right, in reviewing the testimony, or in reviewing the facts in the case, which I didn't get to see until the middle of December, or see sufficient facts -- I always reserve the right not to testify if I felt in fact the city had a good, strong case.

THE COURT: May I ask -- maybe Ms. Omansky is going to, but I don't want to take a chance on it -- what you thought might be your contribution to civic policy by your testimony here?

THE WITNESS: Well --

THE COURT: Or what contribution you would like to make.

THE WITNESS: In my discussions with a great many people in the field of public personnel they are aware as I am of the inadequacies of the system and they are aware of the fact that it is having an adverse impact on minority groups, but they are locked into the system and they have said, "We can't do anything about it because we can't get the money to change the law and to do these things."

So as in private business they said they couldn't afford to do it, but then the courts began to issue some very severe sanctions and they got the message and they found the money and they are now developing sound

selection procesures, and that is all that the guidelines and the law require any employer to do, is to maintain a sound selection system.

Q So when you agreed to testify you didn't have the job analysis, you didn't have the test plan, is that right?

A That's right.

THE COURT: I understand you agreed to testify sort of sight unseen with, however, you said, the reservation that if after you saw you didn't agree, then you would withdraw.

THE WITNESS: That's right. And I have been surprised before in cases when you finally see the material. In the opposite way I once felt there was an employer who I felt was perfect, and when I began to see what he had I said, "I couldn't testify for you."

BY MS. OMANSKY:

Q Are you getting paid for this testimony?

A Well, I hope so.

Q How much are you being paid?

A I think the fee is $250 a day.

Q Is the job analysis, a document known as a job analysis, a summary of a procedure? I mean is that --

A Is a job analysis a summary of a procedure?

Q Yes.

A No, the job analysis is the procedure. The final documentation, you have many pieces of paper and data in the final job analysisthat supports the selection strategy that you employ.

Q You have outlined several steps of that?

A Yes.

Q I assume that the job analysis, the piece of paper that emerges, is the culmination of your procedure?

A It is the final selection plan in my system that comes out.

Q Would it have been relevant to know in more detail how the job analysis was made in this case than you had when you agreed to testify?

A Yes, it would have if I had had much more evidence. But I understand none was submitted.

Q You have the depositions, right?

A I have the deposition .

Q But that was much later, after you agreed to testify?

A Yes. Well, yes, as a matter of fact, I forgot all about it because I get calls from NAACP would I testify in Atlanta, Georgia, and I never hear from them again. This one, as Mr. Mintz knows, I had even

scheduled something else for yesterday and today. I had to move them to be able to be here. But it was all based on the supposition on my part that what I would find is what I would expect to find, and if I found something different I naturally wouldn't have testified.

Q You are pretty available to the NAACP Legal Defense Fund, are you, as an expert?

A No, I have never testified for them before.

Q But they have called you before?

A Yes.

Q And you agreed to testify subject to your qualification if you found something that disappointed your preconceptions you would not?

A Yes.

Q Would you say your preconceptions at all influenced your judgment in this case?

A No.

Q How did you discount your preconceptions?

A Because I take a look at the data submitted and I look for certain requirements in it that meet certain professional standards.

Q Your preconceptions in no way influence you?

A How could they? Here it is. The fact is a fact. Here is the data. One of the first questions

I asked was what was the adverse impact. If there, for example, had been no adverse impact there would have been no case.

Q If there had been no adverse impact with the examination would it have been job related?

A No, it wouldn't, but then you could do anything you like. You could use tea leaves to predict if it has no adverse impact on anyone.

THE COURT: You mean legally you can?

THE WITNESS: Yes, legally.

THE COURT: Has anybody thought of that?

THE WITNESS: They have handwriting analysis and a few other things like that. But the point is many of the employeers heretofore in their selection procedures were doing no more than that and they weren't contested, and he was at perfect liberty to do this unless he had an adverse social impact on a particular group asnd then it's up to him to show that it is related to performance on the job.

Q So they tell me. I understand that burden.

You said if there was no adverse impact you would be free to do whatever you want. Are you saying nonminority persons wouldn't have a legitimate claim if the examination was not job-related?

THE COURT: I think that Dr. Lopez is saying only what he understands the job to be, that job-relatedness is irrelevant, that nobody looks at it if the examination doesn't have a particular kind of impact. Is that what you mean?

THE WITNESS: Yes.

BY MS. OMANSKY:

Q Supposing a nonminority person said, "Gee, I don't think this exam is job-related." Would the law look at that?

A I am not a lawyer.

Q I thought you were telling me about the results of adverse impact and substantial burdens.

THE COURT: I don't see the necessity of going into this. Mr. Lopez may be right or wrong about the law, but maybe he has no competence to tell us what he thinks the law is.

To clear up any misconception, obviously anybody has a right to complain but they have to demonstrate an impact, that is what you are saying?

THE WITNESS: Yes.

THE COURT: And then the question of job-relatedness becomes relevant. I think all Mr. Lopez is saying as he understands the law --

THE WITNESS: I am also trying to say I wouldn't get involved in the case if it were just contesting an examination saying it is irrelevant, you see. I would only get involved in a case on the basis of the fact that it had also an adverse social consequence.

THE COURT: In other words, you are an acknowledged crusader?

THE WITNESS: All right.

THE COURT: I don't say that in any pejorative sense. You have a particular interest in this kind of testimony and only this kind of testimony.

THE WITNESS: That's right. That's right.

BY MS. OHANSKY:

Q I suppose if I came to you and said I just took an examination for attorney in the Law Department of the City of New York and I think that examination was not job-related you wouldn't be interested in testifying for me.

A You see, I am not a professional witness. My business is I am so busy installing programs and administering them that it's a financial sacrifice for me to take the time to come down here and to testify in this case, but I feel that i ou want to call me a crusader you may.

THE COURT: You feel it is worth while?

THE WITNESS: Right.

Q It wou'dn't be worth w'ile for me? You wouldn't do it for me?

THE COURT: He didn't say that. He would do it for you if the impact was unfavorable for your particular group.

Is that right?

THE WITNESS: Yes.

Q If I were a minority?

THE COURT: Not just if you felt unhappy about it.

MS. OMANSKY: I appreciate your attempts to speak for Dr. Lopez, but I don't quite understand. If his interest is in reforming the civil service system, that surely that interest shou'd extend to reaching good examinations for everyone.

THE WITNESS: That is my ultimate purpose, but I haven't got the time, and I don't think it would have the impact because majority groups have been appealing examinations for the last 40, 50 years, and what they have been doing is really weaking the system rather than strengthening it, in my opinion.

But I feel that we have a chance with the

minority group question now to force the authorities, the legislature principally, to adopt enabling legislation that will permit the Civil Service Commission and the Personnel Department to do a proper job.

BY MS. OMANSKY:

Q Lots of money too, I suppose?

A Yes. They have said already it will cost a billion dollars to do it. You know that the International Personnel Management Association has reviewed the most recent edition of the -- the proposed guidelines, the uniform guidelines, and are opposed to it. They are holding it up right now because they say they don't have the money and they couldn't possibly conform to them.

THE COURT: A billion dollars for what? For the whole country?

THE WITNESS: Yes, for the whole country. They say the federal government should provide the funds to do this.

Q Will you tell me about the Human Resources organization? When was it organized. When did you set it up, incorporate it?

A My company?

Q Yes, your company.

A I thought you meant --

THE COURT: What is it called.

THE WITNESS: Felix M. Lopez Associates, Inc.

THE COURT: Where did you get the name?

THE WITNESS: I looked around and vane to name it after the finest psychologist I knew. I established it on January 1, 1970.

Q How many employees are there?

A Five.

Q How many analyses has the human resources organization done?

A Over 200.

Q You have done over 200 in three years, right?

A Yes. We don't do them, you know. The client does them under our direction.

THE COURT: What would you say, you supervise them?

THE WITNESS: We teach them the system and provide them with the tools and train their people to do it because they have to continue to do it from here on out.

Q So you train outside organizations. When you say -- when I asked you the question how many job analyses

have you done the answer is none, isn't it?

A No, no, because I sign every one of them.

Q You sign?

A Yes.

Q And do you go out and -- how do you know whether the job analysis was done properly?

A Well, you would have to see the system, but it is very easy to see whether it is done properly because there are a lot of checks involved in it that we can make.

Q Could you name some of the positions for which you have done job analyses?

A Yes. Secretary, salesman, retail sales clerk, store manager, catalog district manager, vice president, merchandising, power plant operator, lineman, computer programer. The whole gamut.

THE COURT: Could you name some of your better known clients?

THE WITNESS: Yes. The Federal Reserve Bank, the Ford Foundation, Montgomery Ward, American Electric Power.

Q As I understand it, you go to the Ford Foundation or you have people from the Ford Foundation coming to you, you give them a bunch of materials --

A No.

Q How do you do it?

A We go to the client.

Q What do you do there?

A We put them through a training program that lasts maybe two to three days to learn the system. We do a lot of things before that. We first review their whole job structure and we develop what we call a career plan matrix. We develop job families and levels.

Q How do you do that?

A Well, we take the levels by their salary structure.

Q Sort of --

A Yes, it's approximately. We don't have, you know, we don't develop minute ones. We have a broad category. We have one category level unskilled or semiskilled, then we might have skilled, and then we might have senior or supervisory.

In management we have junior management, middle management and top management, three levels.

Q How long does it take you to do this?

A It depends on the size of the organization. A company like Montgomery Ward, with 125,000 employees, it takes six months of study. They find out they have

a mess. You see, this is the first thing you have to do, unravel the organization, if you are going to be able to develop a selection plan for them.

Then we pick a key job to analyze. We don't analyze every job. A key job is one to which a reasonable number of people are expected to move within a reasonable period of time. Of course, that is now going to be defined in the uniform guidelines.

So that is the job this person is going to move to. We analyze that job. And then we --

Q You pick one key job?

A Pardon me?

Q You pick one key job, right?

A No. In the job family we may for good reasons pick three or four. It varies.

Q What is the shortest period of time that it took you to develop this career matrix?

A It took about two hours in the Ford Foundation.

Q So you develop this career matrix, and then you what?

A Then we identify the key jobs we are going to analyze, because that was what I was starting to tell you, we analyze those jobs --

Q Who is we?

A We, the client and the consultant.

Q You and your five employees?

THE COURT: And the client.

A No, generally just one of us does this. It doesn't take -- because we use all of the client's personnel from the personnel department, the management structure, because the idea is to develop the system and install it and they operate it from then on so they have to learn it, and this requires a completely different type of thinking, a different approach, to selecting. Most people think in terms of requirements of five years of experience or a level of education. We eliminate those.

Q What was the company with the 125,000 employees?

A Montgomery Ward.

Q How much did you charge them?

A How much did we charge them?

Q Yes.

A We are still doing it, you see.

Q How much did you charge them so far?

A I don't know. I can't tell you exactly.

Q How many tests -- well -- all right, I will go on.

How many tests have you conducted?

A How many tests?

THE COURT: You meanssince he has been in private practice.

Q Yes, in the human resources organization.

A We have constructed and validated criterion-related validity now, I'd say, about 30 tests, 30 or [illegible].

Q Did you do the tests yourself or was it again a process of instructing?

A No, we construct the tests.

Q For what positions?

A We don't develop tests for positions, you see. We develop tests to measure your constructs.

Q I see.

A Or traits, as we refer to them. But then if the job analysis shows that that trait at that level is required for successful job performance we then use -- we say that test that measures that trait is the one that must be used in this selection process.

THE COURT: Do you sometimes take part of one test and part of another?

THE WITNESS: No, because the test has already been invalidated on a group of occupations, you see, on current employees, and the test is invalidated as a whole as an entity, so you don't break it up.

THE COURT: I think Ms. Omansky is about to ask you something about the tests, so go ahead.

BY MS.OMANSKY:

Q What traits are these you testified to?

A One set of perception-memory-concentration. They are very carefully defined.

Another one would be --

Q How do you test for perception-memory-concentration?

A By using items that would require a person's perception. One way is a comparison of figures or numbers. That is one ofthe types of items used.

Q Is it a written test?

A Yes. Yes, I am not against written tests.

Q Are all the tests you have constructed written tests?

A No. We also do performance exercises. We don't call them tests. We have tests of machine operation, equipment, stenography, typing.

Q Tell me some other traits that you have constructed tests for?

A Decision-making, problem-solving.

Q Wait a minute. Don't go so fast.

Tell me how you test for decision-making.

A You use essentially a simulation -- one of the

methods we use is an in-basket exercise, originally developed by ETS. They taught me how to do that.

THE COURT: I don't know what that is. Can you tell me?

THE WITNESS: That is an exercise where you put a person in a situation where you say you just moved into this job, your predecessor has left it, he has left behind this in-basket with all the correspondence and letters in it. Behave as if you are on the job. Make decisions on each of the items. Then we evaluate.

It was originally designed by the chief of research at ETS, Dr. Norman Fredericksen, and Dr. John Hemphill.

Q Tell me how you test for problem-solving.

A You use items similar to that. You can give them a situation or a diagram, something like that, and create a problem for them.

Q A simulation?

A It's a simulation, yes. All of these tests are based on actual work content. They are material that is used on the job in the job into which the examinee is expected to be placed.

Q How much do you charge for constructing a trait test?

A We don't charge on that basis. We have hourly rates, you see, that depends upon who is conducting the test.

Q What are your hourly rates?

A Mine are about --

MR. MINTZ: I object to it as being irrelevant here. I don't think what he charges for what has any relevance to his opinions in this case.

MS. ONANSKY: I think it will have a great deal of relevance as I develop it, frankly.

THE COURT: Do you want to let the cat out of the bag?

MS. ONANSKY: I want to know how much it would cost to do -- he has moved away from the answer as to how much he charges to construct a test and I want to do a job analysis and it is important to know the cost of these things. Certainly I will point out it is a relevant factor.

THE COURT: I don't see any reason to go into confidential information unless it is necessary, but I think you can ask the witness -- if I thought it were necessary I would ask for an answer, but I think you can certainly ask Dr. Lopez what it would cost to do certain things.

A I will respond to your question. I know that is what you are leading up to. I don't like to give out information because our charges to clients vary, and --

THE COURT: That is why I didn't want to press you.

A But I will tell you you would be amazed how cheaply this can be done.

THE COURT: Dr. Lopez, I don't want to ask you what you charge certain clients, and I am reluctant to allow Ms. Omansky to do that, because I don't think it is necessary for our purposes. If it were, I would.

On the other hand, can you give us some feel of what the scope of cost of these exercises is?

THE WITNESS: At the request of the Department of Transportation I served as an adviser to them in a study leading to the validation of one test for bus driver across the country done by the University of Chicago and the fees in that case for one test was -- one selection program, just for one job, bus driver, was about $325,000.

THE COURT: Are you talking about the total cost?

THE WITNESS: I restructured the whole

Montgomery Ward System from top to bottom for less than that.

BY MS. OMANSKY:

Q For less than the cost to do one test for one bus driver?

A They were using what I call very -- and they didn't have a job analysis, but I am saying if you are thinking along those lines then you are going to get a billion dollar figure. But if you think in terms of what it can be done for --

Q You mean how much you could do it for?

A Not only I. But that can be done for -- I would say the Montgomery Ward, when it is all finished, will have cost probably no more than $250,000 over a four-year period.

THE COURT: That is the total cost to the company involved?

THE WITNESS: Yes, for 125,000 employees. It is less than $2 an employee.

Q I am going to ask another cost question. You said that you did a fireman's study some place for battalion chief?

A Yes, in another municipality not far from New York.

Q What municipality was it?

A Philadelphia.

Q How much did that cost Philadelphia?

A $6000.

Q For the position of battalion chief?

A And assistant fire chief and deputy fire chief. There were three jobs that we tested for.

Q How many jobs, to your knowledge, and you are pretty familiar with New York City practice -- how many positions does New York City test for each year?

A How many positions?

Q Yes.

A Or jobs?

Q I will take positions first, and you can distinguish for me.

A You see, a job is a class of positions. A position would be filled by a single body.

Q How many jobs then?

A Jobs is what you are talking about.

Q Right.

A How many do you do a year, test for?

Q Yes.

A Are you talking about competitive examinations that are announced, and so on? Because there

are a lot of examinations conducted where there is no announcement because I sat on orals for those many times. But just those where you are publishing announcements I would probably figure you are doing maybe 1500 a year or so, 2000.

Q Would cost be a relevant factor to the City of New York for 1500?

A Of course itwould be relevant.

Q Your last contact with the City of New York was in December of 1972 or January of 1973?

A That was the last time I worked for them.

Q Did you ever construct any examinations for the City of New York?

A Yes.

Q For what jobs?

A I can't remember them all, they are in my files, but I did a whole personnel examining series. That is principal, senior, personnel examiner. In all probability Mr. Rosenberg took that examination.

Q For principal and senior?

A Yes.

THE COURT: That means he is well qualified if he passed.

THE WITNESS: Wait a minute now --

Q You constructed the examination?

A I participated in it.

Q How many other people participated?

A The one I am thinking of there was one other person besides myself. We did one part of it, and Educational Testing Service did the other part. And then I served as the appeals for manifest errors for their part.

Q Did you make a job analysis of principal personnel examiner?

A No. We were given a test plan.

Q You were given something similar to what you have here?

A Yes. In other words, you see, they made the decision what the test would cover. They had already done that.

Q Was that satisfactory to you?

A I am trying to think back. It was satisfactory, yes. I think so.

THE COURT: You mean the test plan they gave you, the particular test plan they gave you was satisfactory, or the method was satisfactory?

THE WITNESS: No, the particular test plan was satisfactory at that time. You see, this was maybe

four years ago. I am not talking about the most recent ones. All I did, the most recent one, was I sat on an oral board for some agency for personnel examiner, and then, you know, we pass them and that's the end of it.

Q But four years ago it was satisfactory?

A Professor Sidney Mailick was with me then.

THE COURT: I am still not clear. If it were January, 1973 would this test plan -- would you have considered it satisfactory, or was it just four years ago you were satisfied to proceed in this way?

THE WITNESS: No, four years ago I was. I wouldn't say I was overjoyed with it but, like everybody else, I said we will do the best with what we have. This is the law and so --

THE COURT: So you are not saying they gave you a good or bad test plan, but that you were satisfied with the way it was done.

THE WITNESS: Yes, and for my part I was to develop the content for the written. It was an essay test, not a multiple choice, and I was to cover the content of a personnel job. There were a number of specialties. They were examining people, testing people, training people.

Q Where were all different examinations?

A No, it was one examination.

Q What traits did you determine were necessary for personnel?

A I didn't do that. All I was doing was testing knowledge.

Q Is that a satisfactory thing to be tested for?

A In a personnel person?

Q Yes.

A Yes. That is one of the requirements.

Q Did you happen to ask in the test that you prepared for personnel examiner -- was one of the questions how do you prepare a job analysis?

A I can't recall. It may have been. There was something to do with job analysis in the test.

Q Would it be relevant to ask a candidate for the position of personnel examiner how to prepare a job analysis?

A Yes. At the level that we are looking for.

Q Did you know whether there were persons taking that test who did not prepare a job analysis?

A Yes.

Q Were there?

A Yes, there were.

Q Was it job related to ask them how to do a job analysis?

A If they were promoted they would get on the list for personnel examiner, senior or principal personnel examiner, I am not sure which now, and they could fill any vacancy that came up.

Q Would that be desirable, to test somebody for a job that he doesn't do right now but which he might be called upon to do?

A Well, it was more than that. We weren't testing for what he might do. We felt that regardless of whether you were in training, classification, examining, there is certain knowledge about these other disciplines or the subdisciplines that you should possess. A good personnel man in the section field knows classificatin and compensation.

Q What else would he know? He would know how to do a job analysis, I suppose?

A No, he would have to know the purposes of a job analysis, and also be familiar with the various ways of conducting it, the various plans, things that are in any elementary textbook on personnel administration.

Q Things that are in any elementary textbook you would expect them to know, I suppose?

A Yes, of course.

Q Why?

A Why?

Q Why would you expect them to know things that are in an elementary textbook?

A Why would I expect them to know that?

Q Yes.

A Because he would have a difficult time performing the functions of a personnel technician, a personnel examiner, without being aware of these things. That's the trouble with a great many people in the personnel field; they really don't know personnel.

Q So you would want to test for the knowledges that they could --

A I would expect them to have certain basic knowledge, be aware of certain literature on the subject, and have done some reading in these areas.

Q Would you expect the same thing of a supervising human resources specialist?

A Yes, I would. In his field, not personnel.

Q Certainly. Personnel is, I admit, a separate field.

A I don't have any problems with the generic position. I listened to it.

Q It is proper to test for a generic position?

A Yes, it makes good sense to do it that way?

Q Let's go to the Port Authority. What jobs were you responsible for testing for in the Port Authority?

A All of them.

Q Would you name them? I only work for the city.

THE COURT: He named a lot in his earlier testimony.

A We have maintenance operations and clerical and administrative are the three broad areas in what we call the servicee. That is the nonexempt category of positions.

We most commonly selected people in the maintenance field at the laborer's level, the entrance level,and would test them for that. Then there was a series of competitive promotional examinations all the way up through the automobile mechanics series, electrical maintenance, the plumbing, steamfitting and so forth, a watch engineer and so on.

Then on the clerical side you had clerk 1, 2, 3 and 4.

Q Almost like the city's.

A Yes.

THE COURT: What was the largest number of employees there when you were there?

THE WITNESS: About 8000.

BY MS.OHANSKY:

Q How did you test for maintenance operation, clerical and secretarial?

A It varied, depending upon the job. In some jobs we -- for example, in clerical there would always be a written test and an oral. In maintenance there would be more likely a performance test and an oral. We did not give a written test except for certain jobs where, for example, you had to know electrical theory, and the best way of measuring your knowledge of electrical theory is a written test.

But we almost always developed performance -- standardized performance exercises where the knowledge of how to fit a joint or how to wire something was important. We found that there was a big difference between those who could do a written test and those who did a performance exercise.

Q What traits were you testing for when you were testing?

A I don't know. You are taking me back now to

before I developed this system. All I was running into were the problems you were running into.

Q It wasn't under civil service, was it?

A No.

Q You had an opportunity to do that on your own, right?

A Yes, I did.

Q And you weren't bound by civil service?

THE COURT: I gather God had not illuminated your mind to that extent?

THE WITNESS: No, it took a lot of time. This is the way things develop. You run into a serious problem and you begin to study it more intensively and you say here is the cause of my problem, and so I felt that the real problem was the inadequacy of the job analysis that we were doing, because I first ran into this problem in the '50s in the Port Authority.

Q By the time you left had you instituted your four-step system of doing a job analysis by first doing an industrial examiner who makes a microscopic analysis and then you have a systems analyst who makes a flow analysis? Did you incorporate that system into the Port Authority?

A No. I knew of it then but what we didn't have was the force. I had been interested and I had

been following the work of a person named Primoff who was a psychologist with the Federal Civil Service Commission, and his J coefficient notion, and it was something I wanted to work on. One of the reasons I left the Port Authority was to have the opportunity to pursue these things, because within an organizatonal context you don't have the freedom to do these things.

THE COURT: Especially the Port Authority.

THE WITNESS: There was a great deal of freedom to innovate but this has changed.

THE COURT: Let's relax for 10 minutes.

(Recess.)

BY MS. OHANSKY:

Q What did you do in the City of Philadelphia for the battalion chief and the two other positions you mentioned? What were they?

A Battalion fire chief and then deputy fire chief and assistant fire chief. The assistant is next to the commissioner. Their civil service law requires that all of those positions be executive, unlie New York, where they are appointed. They wanted an examination and they had a lot of problems with the multiple choice format as had New York City, so they asked me to come down anduse different techniques similar to what I had used in the selection of police lieutenants

and captains in the Port Authority. That was another position, by the way, please. How could I forget them?

Q Did you do a job analysis?

A Yes, that is what I described this morning in my testimony.

Q How long did you do it?

A It took one of my associates -- he spent about three days down there. Then with the material we collected on the questionnaires, the filling out of the PAQ, we sent that to Purdue University where it was put through the computer and we got a printout back with their traits.

Q What traits did you identify?

A I should have brought the report with me because I can't recallthe names of the traits that he used in his system. They are a little more elaborate than mine, but it is in the literature. He has published widely. All psychologists are familiar with his work, or nearly all.

THE COURT: With whose work?

THE WITNESS: With McCormick's work.

Q Did you prepare tests for these people?

A Yes, then we constructed a test.

Q What sort of test was it?

A An in-basket test.

Q That was a simulated situation?

A Yes.

THE COURT: You said suppose there was a fire, what do you do, or something like that?

THE WITNESS: Yes. Interestingly, we found in many respects there were no differences in the job, in requirements.

Q No difference in the job in requirements or what?

A Between these three levels of top supervision in the Fire Department.

THE COURT: Battalion chief and assistant and deputy.

A The battalion chief, then the deputy and then the assistant. For example, on decision making, which was one of the traits that comes out of this detailed analysis, you get it in reference to many other occupations, and so on, we found that it was identical for these three levels, so therefore we were justified in administering the same test to those three.

Q Would it be possible to have the same knowledge necessary for a senior human resources specialist as for a supervising human resources specialist?

A It could be possible, yes. I said that. That is possible.

Q That is possible?

A Yes.

Q So the fact there is an identity of knowledges and skills doesn't say anything?

A No, that doesn't say anything. But unless every aspect of the job is the same, and then you would question why you have three levels.

Q You said you tested, you did an in-basket test, for deputy fire chief. How many people took this test?

A About 100, 125. You see, you had to be a fire captain to take it.

THE COURT: You are talking about deputy or battalion?

THE WITNESS: There were some battalion chiefs taking it to complete for the higher level position. But altogether there were about 125. That is my memory now.

Q In New York City, as I well know, in the Fire Department there are about 10,000 men, and the officer rank is fairly small, and I would assume that most of the firemen, the entry level position, compete for the fire

lieutenant's position, which is the next position. Would it be possible to give an in-basket test or a simulated-situation test to 8000 people?

A It would be possible, but I don't know whether you would do it or not.

Q Why wouldn't you do it?

A Because I would have to see the analysis. Excuse me now. I am not familiar with the Fire Department but I am with the Police Department. In the Police Department I know there are deputy inspectors and inspectors and then borough commanders and so on. There are only 160 of them because I conducted a course for them. There are only 160 of them. Philadelphia is a smaller city.

Q Would the ability to make decisions be relevant to a fire lieutenant in New York City?

A I would think so.

Q How would you test for that if you had 8000 candidates?

A You are getting free consulting here.

Q We need it. You say we need it, anyhow.

A You do.

I would rather say how I did it for the Port Authority police lieutenants.

Q You are quite an experienced tester, you have your own firm and have done a lot of work. Based on your expert opinion I would like to know, if the ability to make a decision is important to a fire lieutenant, how you would test for that if you had 8000 people taking the test?

A We are assuming now it is important, right?

Q Yes. I assume it is important.

A It is also what kind of decisions do they make and in what contextare those decisions made. If they are administrative decisions --

Q Let's take decisions how to fight a fire. You have to make a decision on how to fight a fire. That is a fairly skilled art, isn't it?

A Yes, it is.

Q I assume that every time a truck goes out there is a decision that is made as to how to fight that fire.

A I don't know if it is so. I think it is standardized and he follows the regulations and procedures. He might get into a situation where he can't follow regulations or procedures and this would call for a decision

Q You think that might occur often in a fire situation, which is unpredictable?

A Not often. No, I don't think it occurs often. It does occur, though, and that is the critical time.

Q It is critical, isn't it, the ability to make a decision?

A Yes, and you should measure it.

Q I want to know how you measure it if you have 8000 people.

A If you have 8000 people?

Q Yes.

A I think it can be done. I don't know just how. I would have to give some thought and study to what kind of a simulation I would set up where I could also administer it to 8000 people. That is not a deterrant, incidentally, just sheer numbers.

THE COURT: Explain why it is not.

THE WITNESS: It is just a matter of hiring people if you need them to administer.

THE COURT: Even, for example, if you only have 50 to conduct this test, if there were 8000 people, you might do it over a longer period of time?

THE WITNESS: That's right. We do this. The argument, you know, that we know this procedure is very bad but it is cheap and it is convenient to me

just doesn't stand up. We have got to find other ways of doing it, and I think we can do it, and I think the city has the competence to do it too.

Q How would you test for tolerance?

A Tolerance?

Q Yes.

A Not all of these traits can be measured by a written test or a simulation. In some instances we would have to use verification procedures to inquire into their background or previous experience. Tolerance you might. Some people try to do this with stress interviewing: put you in a situation and see if I can get you to lose your temper. But those are unreliable, and they also are bad public relations.

Q In the Philadelphia case you say you distributed questionnaires?

A Yes.

Q To whom did you distribute the questionnaires?

A We distributed them to a number of assistant fire commissioners, to the fire commissioner, to some battalion chiefs and so on.

Q You asked them what they did, is that correct?

A The questionnaire has a great many questions on it. They go into various aspects of it, not simply

into just what you do by any means. He goes into the degree he will describe something, and say is it better in this position sometimes, always or never.

It is probably the most widely known of the worker-oriented job analyses and the research is still on-going.

Q Do you have any union problems when you distributed questionnaires to people in the Fire Department in Philadelphia? Did the union come around and say, "Is this going to affect anything in our collective bargaining agreement" etc.?

A No, it didn't. Elsewhere where I have done other types of job analysis we involve the union in the job analysis and they are very cooperative.

Q I suppose if you submit these questionnaires to people you presuppose everybody is more or less doing the same job, is that correct?

A You don't presuppose it. You select people as being representative as far as you can see of the positions that exist in that organization. It is one job but we have varying positions in it.

Take a fire lieutenant. There are some fire lieutenants doing fire prevention work and they are not out there in the firehouse at all. So that job is a

totally different job. But it is a city test for one job.

Q And it is okay to test for one job?

A No.

Q Did you give different tests?

A I would. If the job analysis calls for a different set of characteristics on the part of the incumbent you would then have to use different measures.

Q How many tests did you give for battalion chief?

A We only gave one.

Q How many tests did you give for deputy fire chief?

A One.

Q And for assistant fire chief?

A One.

Q Did you determine to your satisfaction that all assistant fire chiefs were doing the same job?

A Yes.

Q It would make a difference if everybody was doing --

A I said this morning if we find differences we test -- one of them is what we call the interrater agreement. You see, you can get a measure there, and

if you have a wide discrepancy in their perceptions of the job you don't just average it, you see, you go back and say, "How come? Either one of you filled it out inaccurately or you are describing different jobs." That is the way in which you prevent a selection error later on down the road.

So we find thatthe statistics show there was an interrater agreement something in the 30s, which is very good.

THE COURT: What's the word?

THE WITNESS: Interrater. It is simply a correlation between the ratings.

A If you are using the instruments, that is the first thing you have to determine.

Q To the best of your knowledge of city experience, New York City and other experience, would it make any difference if you submitted these questionnaires to a group of provisionals?

A It wouldn't make any difference. If they are performing the job and the requirement that you have is that the person knows the job, that's all. I don't care what his status is, if he really knows that job, and you have common sense reasons for supposing he does have it, then it is important to do this.

THE COURT: If you had been commissioned to handle this situation here in New York would you have administered a questionnaire to a certain number of people, for example?

THE WITNESS: I would have done -- yes, I would have done an analysis that would have been, you know, particularly faced with the situation that was as I understand here, where you have people with one title but doing -- working in different agencies and with sub-titles, parentheses, parenthetical titles, I would check that out very carefully, because frequently you do find that the jobs are different, they call for different skills, knowledge and ability.

THE COURT: Putting aside the question of differences or similarities, would you have been concerned that administering the questionnaire, if that is the right terminology, to some people who might be taking the test might give them a break over others who were taking the test to whom you did not administer the questionnaire?

THE WITNESS: I wouldn't have any -- I don't see how that could possibly be.

THE COURT: You don't think that the tone or approach of the questions need necessarily give any

indication of what it is likely to get on the exam?

THE WITNESS: No, I don't think so at all. You might find, as we did frequently in the Port Authority, that we would have part 1 of the test that would be for everybody, and then part 2 would be the parentheses, and the candidate had the option of selecting the one he wanted to take. So that might have been a desirable procedure in this case.

BY MS. OHANSKY:

Q You mentioned that you would take a 10 per cent sample.

A That is a generally accepted sample.

Q If you had 100 people surveyed in a job, I guess that would be 10 people?

A Yes. But that would be a minimum. They would have to represent a cross section.

Q You would have to know the job?

A Sure.

Q How long did it take to accumulate the 20,000 items in your file?

A Probably 10 or 11 years.

Q Do the items ever get out of date?

A Yes.

Q How did you determine this?

A When they were chosen for -- you see, we had a system there. The technician could use the file but he had to buy the questions by submitting five new ones. That is one of the ways we kept it current. Of course we would only use a few of these because they were essentially untested questions in the test plan, and that is the way you would -- then he would look over items in a category and he would see a question that no longer applied.

We also, incidentally, something that I am not sure you do in the city, there was a time when you did not do it, is we always submit the test to the subject matter experts in the department. If it were a police test we would have top people in the Police Department take the test and criticize it for any technical inadequacy or aberrations in it.

Q If you give the test, if you try the test out, if you pretest it, do you have any problems of security?

A Yes. You have to do it in a way that it will remain secure.

Q How do you determine whether the test items remain secure?

A The way we did it was it was either we tested it out in some other area that was not related to this

or we had top level people, you know, take the test.

Q Supposing you were testing for craft knowledge. Could you test it out in a different area?

A No, no. We had a different philosophy there, but you had to maintain the security of the test, but if you tested craft knowledge that was absolutely essential to your job, if a person knew this we didn't feel that even knowing it in advance gave him any advantage, but we maintained the security.

Particularly this is true with performance type tests, you see. In other words, you don't have to keep it a secret somebody is going to have to type a letter, or a carpenter would know that he is going to have to do hammering.

Q I suppose it is a lot easier if you are giving a performance-type test?

A Yes.

Q If you are going to be able to use items again I suppose that the job itself has to remain fairly stable? I mean you would have to make sure the job hasn't changed.

A Yes, and know because you are using items now. You don't use the same tests again. You can keep using the items if they are measuring a certain, particular area that is critical for performance. This

isn't that important. Sometimes you would drop something out.

For example, take a bus operator. At one time he had to know some simple arithmetic. But then you went into the locked-box system and he doesn't even need to know how to make change.

Q Did you give the bus driver a written test?

A The bus driver?

Q Yes.

A Yes, I did. This was not in the Port Authority, this was in MABSTOA, a subsidiary of the New York City Transit Authority not under civil service. I was invited to participate, to conduct a series of examinations for bus driver to dispatcher, and I did.

Q Is the ability to read important in being a bus driver?

A No.

Q I thought you testified before that the whole test more or less is a reading comprehension test?

THE COURT: What I got from Dr. Lopez before was that a test could be a reading comprehension test by setting it at the level of the reading required by the job when reading is required by the job. Is that right?

THE WITNESS: That's right. The only reason you would separate it is if varying degrees of proficiency in reading were important in the job.

Q What degrees of proficiency were important in reading for the bus driver?

A None. I said that.

Q cheless you gave them a written test?

A Yes.

Q Did you test a lot of bus drivers?

A Yes.

Q Is that one of the reasons you gave a written test?

A I didn't test the bus driver. It was for promotion to dispatcher. The bus drivers were the candidates. I introduced into the city the concept of eliminating all tests for bus drivers. I said the only test you need is the possession of a driver's license, and on that basis for the first time there was introduced into MABSTOA a large number of minority groups. I checked on it later, and to the horror of the superintendents, depending on what is called the APA examination they had been using, we found in the accident there was no change, there were no other changes in the performance of the system.

Q Did you do the same thing for dispatchers?

A No, for dispatcher the strategy we used here was we developed a written test based on knowledge of geography because the dispatcher had to tell people where to go in the city, he had to make up schedules, and we had that in there. But, you see, we don't use an arbitrary pass point. We cut off at a level that we felt that was so low that there would be -- that if the person didn't pass that he probably couldn't perform in the job effectively, or at least not as well as the others, and the rest of them we then put through an oral simulation exercise that was tape recorded. It was quite interesting.

As a consequence of that, the objective that I was after was achieved. On the eligible list were as many -- the same proportion of whites that were in the African population, and the same proportion of blacks, and so as a consequence of this had we set a 70 per cent cutoff we would have screened out a great many of the blacks, but as a consequence of this a great many of them were promoted to the job, and as a result of that we were sued by the whites.

Q Problems never end, do they?

Did you ever hear of Delehanty's?

A Yes.

Q What did they used to do before they went bankrupt?

A I knew Mr. Delehanty. He ran a school ot teach you how to pass a civil service examination. He would get the book and drill you in it until you passed.

THE COURT: A cram course?

THE WITNESS: Yes. He branched out into a high school later.

Q What if Delehanty's or an analogous organization got some of the questions and prepped people on it, and New York City, using an item bank, used those questions. Do you think there would be an objection to the exam?

A They would have to develop quite a massive and expensive program to be able to offset this. They tried to do it with me in the Port Authority.

In New York City for a period you did not release examinations, you were attempting to go in this direction, and the candidates would go in with the agreement they each would memorize one question and they would come out and put the test together, and within 24 hours they have your test anyway. That was done in

the Port Authority, but that didn't have much of an impact on our construction of the tests and so forth.

Q Was it a factor?

A I could never identify it as a factor. I don't think we ever had a complaint on that score.

I might say in the City of Philadelphia in the two series I ran there there were no appeals.

THE COURT: You mean appeals were possible but none were taken?

THE WITNESS: Yes. My contention is when an examination is relevant and logical you do reduce the appeals to almost nothing.

BY MS. OMANSKY:

Q How many appeals were there in the supervising human resources specialist exam?

A I don't know.

Q Suppose I told you there were 10 appeals?

A I am glad to hear it.

Q If there were no appeals would it be your position that that exam was probably a pretty good exam?

A In one respect, in terms of candidate acceptability.

Q When you were testifying you said you testified in New York State courts, is that correct?

A Yes.

Q And you were testifying to uphold -- may I suggest this was an Acosta-type challenge, that the candidate's answer was as good as or better than the examiner's answer?

A I testified for the Corporation Counsel.

Q That's right.

A On seven questions dealing with supervision and management, and I was the expert. They were being contested by those that were -- it was a fire captains list, and only on those questions, and all the questions were upheld by the judge.

Q Did you honestly believe that the questions that you were upholding were job-related questions?

A I wasn't testifying on that. I was testifying on the accuracy of the key answer.

Q Being as good as or better?

A It was the best answer and the only answer I testified to.

Q Do you suppose somebody could do the same thing for the supervising human resources specialist test, testify that the answers were the best answers and the only answers?

A In some of those questions I would testify to

that. Not all of them. But then somebody else might.

Q You said it is very difficult to measure your supervisory skills, right?

A Yes, it is.

Q And that you yourself had never been able to validate?

A Two widely published tests of supervision. One is "How Supervised," published by Psychological Corporation, and the other one is -- I forget the name of it, "Principles of Supervision," by Martin Bruce, who is a test publisher up in Westchester. I just finished this big study of that one involving 500 managers with zero correlation.

Q Wher you were testing in the Department of Personnel were you testing for a supervisory position?

A Yes. I also did some supervisory administrative positions outside of the Department of Personnel for the Department of Personnel.

Yes, supervision was involved.

Q Were those questions valid?

A I didn't do the questions on supervision. ATS did those.

Q Were ATS questions on supervision valid, do

you know?

A Yes, I think it was. They used an in-basket exercise, and there was an appeal from that, and I was the technical consultant on the appeal. Being one of the few people that understood in-basket exercise, they had no choice, outside of ETS.

Q You talked about these assessment centers, and you said you are now putting 5000 managers through?

A We plan to do that.

Q How long would it take for each candidate to go through this assessment center?

A There are varying models. The model that I have finally devised -- well, I haven't finally devised one, but I hope to one day. The telephone company put them through in two and a half days. They only do that once in their career.

Q Once in their career?

A Yes. The Federal Civil Service is using an assessment, but I don't know what model they are going to be using. They are also interested in it.

Q The Federal Civil Service also uses reading comprehension?

A I don't know what they are doing. All I know is some of the agencies are going to use the

assessment center concept, which is a rather recent innovation in selection.

Q Do you know whether the Federal Civil Service entrance examination test is a reading comprehension test?

A Yes, it is. It is in litigation.

Q Do you know whether or not it has been sustained so far?

A It has been sustained but not by the Supreme Court.

Q What is content validity?

A Content validity?

Q Yes.

A It is the test or the instrument measuring the trait or the factor that is associated, that it purports to measure, I think I would say it that way.

Q Is the trait a factor of knowledge or a personality factor?

A It could be anything. It could be a skill such as typing, or it could be driving an autombile, and it could be a trait. Sometimes when we use it as a trait we call it construct validity.

Q Is construct validity the same as content validity?

A Yes, pretty much.

Q If you want to test how much someone knows or has learned about a field what would the appropriate kind of test be?

A If you want to test pure knowledge?

Q Yes.

A Well, if he can read and write I would use a paper-and-pencil test. Otherwise I could use an oral test. I have done that many times.

Q Would it be a content validity or a construct?

A That would be a content validity test because it would show the knowledge you are using in your test is also used on the job. But you see the point is in terms of your total selection strategy, if you just base the selection on that you might be in serious error.

Q You mentioned something about mass conspiracy among supervisors. You were very much disturbed by the fact that supervisors in this case rated, you think -- by the way, who did you speak to in this case besides Mr. Mintz?

A No, one.

Q No one else?

THE COURT: I didn't get from Dr. Lopez' testimony what you just said. I got from his testimony that he believes that if a large number of people pro-

visionally in a job didn't pass the test, then either the test was poor or one had to assume that the supervisors were conspiring to keep people who were unqualified in the job in the job.

Is that right?

THE WITNESS: Yes.

THE COURT: You didn't say they were doing it.

THE WITNESS: Yes, that through incompetence they were permitting people to function.

BY MS. O'HANSKY:

Q You did say that the problems of criterion ratings could be overcome. Does everybody agree with you on that?

A That is a broad question. I don't know whether everybody agrees with me on that. If you ask if the body of psychologists who have studied and addressed themselves to criterion problem, would they agree with me on that, I think so.

Q I don't want to confuse you. I am going back a minute to the difference between content and construct validation.

Does the American Psychological Association distinguish between them?

A Yes. They have four different types, but I think they also say that construct validity is a special case of content validity.

Q Would you say that in test development the level of predictors is higher than criterion development?

A This is my opinion and I would say yes, that -- I better say it because I have written it, that psychologists have addressed themselves more to the predictor side of this equation and have neglected the criterion side of it. They have just assumed that the criteria that they were using were accurate and correct.

Q What is the difference between Criteria and predictors?

A A crition is a measure of job effectiveness. The predictor is simply a measure of a trait in a person that will indicate whether or not he will be effective in the job.

Q Do you think an aspect of criterion contamination is a situation in which a person might rate another person high or low becasuse he is of a certain ethnic or racial group which he favors or does no- favor?

A That is not contamination; that is just bias.

Q Do you know if --

Q Do you know if --

A Contamination is where some other influence, such as knowledge where a person stands on a test, you see, would contaminate.

Q That is the only aspect of contamination?

A That is the way I use it.

Q Do you have any idea as to whether or not you can overcome the problem of bias, as you call it?

A I hope so.

Q Has it been overcome, that problem of bias?

A It's been minimized. I don't think you can ever say -- essentially you are -- well, at some place you can, if you use some objective indices. If you use attendance records or pure production records that would be an unbiased rating. It may not be the most accurate or the best but it is unbiased. But where you are getting into the position of one person evaluating the performance of another, it is rather difficult to minimize the effects of bias.

Q How would that affect your judgment as to how supervisors rated provisionals in this case?

A You see, I am assuming -- and I think it is a valid assumption -- that you have to take as a fact that if the supervisors continued to permit these people

to perform on the job they are performing it satisfactorily. If the work of the agency is going on and these people are presumably in fairly key functions, then I would say that de facto they are performing satisfactorily.

If you are going to say who is performing most satisfactorily, this is the question supervisors have more difficulty, you see, in distinguishing. They don't like to do this. Generally speaking, they want to give everybody pretty much the same rating.

Q Let's talk about that. If they wanted to give everybody the same rating, would that affect your judgment as to the validity of the evaluations in this case?

A It is perfectly possible to conduct a validity study with just two dimensions to your criterion. One is satisfactory-unsatisfactory. You see, you don't need to have a normal distribution. If you are going to try to identify superior performance or something like that, then you would need a greater differentiation in your criterion.

Q If you just had a satisfactory-unsatisfactory evaluation, and everybody was satisfactory, is that of any value if you are trying to equate their performance on an exam with that evaluation?

A That is a crucial factor. Here I have all acceptable employees. If I give this test and I find that some of the employees have scored 12 right on the test of the 75, then I would say anybody scoring above 12 can perform the job satisfactorily.

Q Did we finish up how you would account for bias in our case?

A That would take me into an extended discussion of a technique or techniques that have been developed. The one I use is known as the forced-choice technique. Dr. Melanie Baer of the University of Chicago prepared a comparison technique, and she uses that. She has elaborate statistics to show how that has eliminated myself, particularly if you correct for length of service and seniority.

Q I am asking in this case what weight you gave to the factor of bias or possible bias in the supervisory evaluations. I had the impression you said that wasn't important, but what was important was that everybody was rated satisfactory.

A I don't think I said either of those things.

Q Would you clarify?

A I said I don't think that a differentiation on criteria is essential to validate a test for the decision

of pass or not pass, to determine whether they are qualified to do the job. If you are in the position of selecting the best qualified from a group of people you would like to get more, but you get into another problem on your criterion side of having what we call a skewed distribution. You don't have normal distributin.

You would assume that unsatisfactory people or those marginal employees have been eliminated by the selection process or by the supervisory process, and so you have mainly effective performers and perhaps some superior performers. And so the notion of linear progression between the test score and job performance is generally not borne out in real life. So we are not concerned about it

Q In an earlier question I described a situation in which you said that wasn't criterion contamination, it was bias. Professor Williams says it is criterion contamination. Would you disagree with that?

A That is his terminology in his book. I have a book too, and I call contamination something else.

Q What do you know about the position of supervising human resources specialist?

A Very little.

Q But you made a statement that the exam was not content valid?

A That's right.

Q On what basis?

A I said there was no evidence of it.

Q You didn't speak even to any of the plaintiffs?

A Right.

Q You spoke only to Mr. Hintz or Mr. Howard?

A Yes, I spoke to Mr. Howard too.

Q Did you think the purpose of this exam was to predict performance?

A Yes.

Q Would you expect a person who has a master's degre in social work to do better on this test than somebody who did not have a master's degree in social work?

A I don't know. I couldn't make any expectation because what does the other person have, you see.

Q I think my question was a statement on which you would have imagined the better educated would be better?

A I found people with a limited education who have performed better in certain jobs than people with graduate degrees.

Q Would somebody who has a master's degree from

the Columbia School of Social Work be test-wise, do you think?

A I would guess so, yes, pretty much.

MS. OSANSKY: I have no further questions.

THE COURT: Any further questions?

MR. HINTZ: No redirect.

THE COURT: Thank you very much, Dr. Lopez. It was quite interesting.

Are the plaintiffs resting now?

MR. HINTZ: Yes.

THE COURT: Are the defendants going to call anybody? I am not inviting it. I just want to know what the technical position is.

MS. OSANSKY: No, your Honor.

THE COURT: Then can I see counsel briefly in the robing room to seewhat arrangements we can make from here?

(Discussion off the record.)

(In the robing room.)

MR. HOWARD: I discussed with counsel for the defendants and they have agreed, with respect to the witnesses James Jones and Mary Eccles and Andrew Jackson, that they are all African, black. We thought we would put that on the record.

THE COURT: If they had not stipulated I would have taken judicial notice.

MR. MINTZ: The Second Circuit might not.

THE COURT: That's right, I guess.

MS. OHANSKY: That is why we asked Dr. Williams the question.

MR. MINTZ: Tie figures I talked about the first 15 minutes of the trial, we haven't yet gotten a response from the city, and they should be a matter of record.

(Discussion off the record.)

THE COURT: Counsel for the defendants have been instructed within the coming week to arrange for submission to the court and to plaintiffs' counsel of a resume or a recap of the number of blacks and whites who passed and failed the examinations here, 2013 and 1631, the number of blacks and whites presenting serving as supervising HRSs, the numbers of blacks and whites who would be appointed to the position of supervising HRS if the exam results were effectuated.

THE COURT: In an off-the-record discussion it was indicated to the court that the parties have agreed that the plaintiffs may and shall by January 18th file a proposed amendment to the complaint or amended

complaint.

MR. HOWARD: In the nature of a decision.

THE COURT: Adding a Hispanic plaintiff and allegations as to his background.

- -

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Plaintiffs' Exhibit 4

[SECOND AMENDED NOTICE OF EXAMINATION NUMBER 1631]

OFFICIAL
Cal. #677 - 9.28.72
56040

Notice of Examination
2nd AMENDED NOTICE
(October 5, 1972)

No. 1631

PROMOTION TO SUPERVISING HUMAN RESOURCES SPECIALIST

Candidates who filed previously need not file again.

This examination is open to eligible employees of all affected agencies of City government. A separate eligible list will be established for each agency.

SALARY: The minimum appointment rate for this position is $12,600 per annum.

APPLICATIONS: Received in person only, October 5, 6 and 10, 1972 from 9:30 a.m. to 4:00 p.m. in Room 219, 55 Thomas Street, New York, N.Y. 10013. No applications issued or received by mail.

DATE OF TEST: The written test will be held on October 14, 1972.

ELIGIBILITY REQUIREMENTS: Open to each employee of all affected agencies of City government who on the date of the written test: (1) is permanently employed in the title of Senior Human Resources Specialist; (2) has served as a permanent employee in such title for a period of not less than six months immediately preceding that date; and (3) is not otherwise ineligible.

Persons serving in the eligible title and who obtained such title pursuant to Rule 6.1.9 will be credited for service in the prior title for meeting the eligibility requirements for this examination.

DUTIES AND RESPONSIBILITIES: Under direction, with broad discretion for the use of independent judgment and initiative, supervises and directs a group or groups of Senior Human Resources Specialists and lower level employees of the Human Resources Occupational Group and/or other employees, in planning, executing and evaluating programs relative to one or more of the following areas: manpower and career development, management, community development, or program planning and analysis; or performs complex and highly responsible staff assignments in relation to any of the programs listed above; performs related work.

EXAMPLES OF TYPICAL TASKS: Supervises a group or groups of Senior Human Resources Specialists and lower level employees of the Human Resources Occupational Group and/or other employees; in planning, executing and evaluating any one or several of the above stated programs; plans, assigns and reviews the regular and special work of the group and, as necessary, trains and instructs members of the group; coordinates all the activities, functions and reports, including research, of assigned group; develops and implements systems to be used, policy procedures and overall plan of operations; assesses and determines goals and priorities; adopts and translates research knowledge into working practicalities; maintains liaison with business, labor and industrial organizations and public, private and community organizations and agencies, to negotiate contrac renders advice on program policies, plans and budgets; seeks improvement in faciliti and activities; reviews compliance with terms of contracts; may provide professional expertise in the area of specialty; interviews and participates in the selection of prospective professional or clerical employees, clients and trainees; assists the director or assistant director in formulating policy; prepares summaries of program plans, research and evaluation reports for use by the director and/or commissioner before governmental, private or civic organizations; designs, develops and implements projects involving complex, sensitive and far-reaching problems and policies related to the area of specialty meets with officials and representatives of private and public agencies and community groups, to accomplish any of the above, to provide functional services, or to obtain feedback as to policies, programs and procedures; may assume the responsibilities of immediate supervisor in the absence of that individual.

TESTS: Seniority, weight 15; written, weight 35, 70% required; oral, weight 50, 70% required. The written test will be of the multiple-choice type and may include questions covering the following areas as they relate to Supervising Human Resources Specialist: Functions of the Human Resources Administration, its constituent agencies and other relevant public and private agencies; current developments and problems in the field of human services; community relations and organization; judgment in on-the-job situations; techniques of staff development, supervision and guidance; language usage including vocabulary and reading comprehension; arithmetic computations and interpretation of tables, charts and graphs and other related areas.

The factors in the oral test will be speech, manner and judgment. The oral test will be designed to measure ability to respond to stress situations, to handle and supervise people, to meet effectively with high administrative officials, to conduct conferences, to deal with community groups, etc.

The pertinent sections of the General Examination Regulations and the General Provisions of the Notice of Examination are also part of this Notice.

CITY CIVIL SERVICE COMMISSION: Harry I. Bronstein, Chairman;
George Henry, Jr., Secretary.

195abl

Plaintiffs' Exhibit 4A

[EXAMINATION NUMBER 1631]

THE CITY OF NEW YORK
DEPARTMENT OF PERSONNEL

Appl. No. _____

PROMOTION TO SUPERVISING HUMAN RESOURCES SPECIALIST
EXAMINATION NO. 1631

Written Test - Weight 35, 70% Required

October 14, 1972

GENERAL INSTRUCTIONS

Time Allowed: 2½ Hours

SIGNALS

First Signal: Question booklets distributed. READ THIS PAGE ONLY.
Second Signal: Open your booklet. Begin work.
Third Signal: End of test. Stop all work. This signal is given 2½ hours after the second signal. If you finish before the third signal, summon the monitor. No extra time is allowed on account of lateness. The time allowed includes time for fingerprinting.

BOOKLETS

This test booklet should consist of 19 consecutively numbered pages. There are 80 questions, all of equal weight. ANSWER ALL QUESTIONS. Examine your booklet after the second signal is given to be sure it is not defective in any way. You are responsible for obtaining a complete booklet.

You may make a record of your answers in the test booklet and you may take the test booklet with you. This is necessary in the event that you wish to protest the proposed key answers. The time allowed includes time for recording your answers and no time may be taken for this purpose after the third signal is given. Further information concerning key answers and protests appears at the end of the test booklet.

If you read these instructions carefully, you will not need to make inquiries. No monitor is authorized to change these instructions or the terms and conditions of this test. You will be DISQUALIFIED if you obtain or attempt to obtain information or help from books or other sources, copy or attempt to copy or read the work of another candidate, permit your work to be copied or read by another candidate, communicate in any way with another candidate, leave your seat without permission of the monitor, sign your name or put any identifying mark on any answer sheet, or disobey an instruction of an examiner. You are prohibited from having on your desk or in your possession during the course of the test any reference materials, notes, or newspapers which you have brought with you.

It is a misdemeanor for anyone to impersonate a candidate or permit himself to be impersonated at an examination.

Smoking is NOT permitted.

LEAVING

During the test you may not leave your seat except when necessary, and then only when accompanied by a monitor. You may withdraw without completing this test and not have your test rated by writing "I withdraw" and your signature on your answer sheet and giving it to the monitor. However, no candidate will be permitted to depart before 10:30 a.m.

DO NOT OPEN THIS BOOKLET UNTIL THE SECOND SIGNAL IS GIVEN

Plaintiffs' Exhibit 4A

DIRECTIONS FOR ANSWERING QUESTIONS

Answer all questions on the official Answer Sheet before the third bell has rung. ONLY YOUR ANSWER SHEET WILL BE RATED.

For each question, select that answer which you believe to be the acceptable one among those listed and note the capital letter preceding your selected answer.

Then, on the official answer sheet, find the row numbered the same as the question and record your answer by blackening the space between the dotted lines immediately to the right of the capital letter representing your selected answer, using a No. 2 pencil.

When recording your answer with a No. 2 pencil, fill in the entire space between the dotted lines and the full length of the lines by pressing firmly on the pencil and using several strokes.

IF YOU WISH TO CHANGE AN ANSWER, ERASE THE OLD ANSWER COMPLETELY. Do not cross it out. Then record your new answer in the proper space.

Do not make any marks except your answer. More than one answer to a question or improperly erased answers or stray marks caused by resting the pencil on the paper may be counted as wrong answers.

Use pen (blue or black ink) for filling in the headings on your answer sheet but use only the No. 2 pencil for recording your answers.

Do not fold the answer sheet or damage the edges because the rating is done by machine.

Since there are only 4 answers listed for each question, the spaces to the right of the letter E on the answer sheet are not used for this examination.

To help you understand the procedure, the following sample item is given:

SAMPLE 0: The sum of 5 and 3 is

(A) 2 (B) 8 (C) 9 (D) 11.

The sum of 5 and 3 is 8, so that the acceptable answer is shown thus on your answer sheet:

SAMPLE 0: A ===== B ▬▬▬ C ===== D =====

C O N T I N U E O N

F O L L O W I N G

P A G E

1. Of the following, the best time for a supervisor to give advice about a job-related problem which a subordinate has brought up during an interview is usually after the

   (A) subordinate has told him all the facts
   (B) supervisor has determined the employee's unconscious motives for bringing up the problem
   (C) employee has submitted a written report on the problem
   (D) supervisor has discussed the problem with his superior.

2. Of the following, the situation in which a supervisor would have to make the greatest effort in order to communicate effectively with his subordinates would occur when

   (A) there is a large gap between the supervisor's background and experience and that of his subordinates
   (B) the subordinates have already learned about the information through informal channels
   (C) the subordinates have completed their education much more recently than the supervisor
   (D) the supervisor has been with the organization for a much shorter time than most of his subordinates.

3. Of the following, the factor which would be most critical in influencing whether subordinates accept or resent a supervisor's authority is the

   (A) manner in which the supervisor uses his authority
   (B) frequency with which the supervisor ignores minor violations of rules
   (C) degree of delegation to subordinates by the supervisor
   (D) cultural attitudes of individual subordinates toward authority.

4. In which one of the following situations would employees be most likely to accept temporarily difficult working conditions without excessive complaining?

   (A) The organization has a strict policy of disciplinary action against uncooperative employees.
   (B) Employees do not have the right to take part in "job actions" or strikes.
   (C) An atmosphere of mutual trust and good human relations exists between subordinates and managerial personnel.
   (D) Relationships between subordinates and managerial personnel are strictly businesslike.

5. Assume that an agency has been reorganized into integrated work teams. Instead of assigning employees performing the same task to a single unit, such as a typing pool, those performing different but interdependent parts of an activity are put into the same work group. Of the following, the most probable result of such a reorganization would be to

   (A) permit more efficient work scheduling
   (B) achieve greater economy
   (C) decrease training costs
   (D) improve employee job satisfaction.

6. The need for identification with a work group has been found to be one of the most powerful on-the-job motivations. Of the following, the employee who is <u>least</u> likely to have a strong attachment to his work group is one who

   (A) is at the very bottom of the organization's promotional ladder
   (B) belongs to a small department
   (C) works with others of similar background and interests
   (D) has worked for the organization for a considerable period of time.

7. According to many management experts, the one of the following situations which would be the most significant indication that employees of an organization are dissatisfied with their supervisors and feel that they are being treated unfairly is one in which

(A) employees submit a large number of work-related suggestions
(B) many employees are unproductive and seem to be continually loafing on the job
(C) union membership has recently increased
(D) turnover is low in spite of a comparatively good labor market.

8. A supervisor who has informal, friendly relationships with his subordinates is conducting himself

(A) appropriately; good informal relationships set the stage for better communication between the supervisor and subordinates on work-related problems
(B) inappropriately; subordinates who have informal relationships with their supervisor are not likely to accept his authority
(C) appropriately; friendly relationships between the supervisor and his subordinates will create a true feeling of equality between them
(D) inappropriately; subordinates are likely to become suspicious of insincerity and fearful of being manipulated.

9. Specialization is a commonly-used method of increasing productivity and efficiency in a large organization. Task specialization means that separate and comparatively simple parts of a more complex job are performed by different employees. Of the following, this type of specialization probably would not

(A) reduce training costs
(B) permit the use of more specialized equipment
(C) simplify the development of job controls
(D) give most employees a greater sense of accomplishment.

10. Some management experts who have studied informal communication patterns in large organizations believe that the office grapevine is an effective means of communication. Of the following, an important function performed by the grapevine is to

(A) permit feedback and spread information faster than most formal communication systems
(B) give employees important information from reliable sources
(C) permit management to identify rumor-mongers and troublemakers
(D) bring informal leaders to the attention of management.

11. Recent studies of morale and productivity tend to show that

(A) the correlation between morale and productivity is rather low
(B) high morale is associated with high productivity
(C) low morale is associated with high productivity
(D) low morale is associated with low productivity.

12. Research studies have indicated that teamwork among employees is most likely to result in higher productivity in a situation where

(A) employees accept as legitimate management's demands for higher productivity
(B) management strongly encourages the workers' competitive spirit
(C) employees are unified for the purpose of protecting themselves against management's demands
(D) management does not encourage employees to make independent decisions.

13. The relationship between boredom on the job and fatigue is correctly stated as follows:

(A) Boredom usually results in increased fatigue.
(B) A worker usually becomes bored when he expends a minimum of physical energy.
(C) Fatigue usually results in boredom.
(D) A worker who is bored does not usually become fatigued.

14. The "halo effect" can properly be suspected of harming supervisor-subordinate relationships when the supervisor

(A) does not discriminate between the good and poor work of an employee considered by him to be generally superior
(B) expects his subordinates to treat him in an impersonal and formal manner
(C) hesitates to discipline employees because of an extreme need for them to like him
(D) is unable to gain his employees' confidence because he cannot shed his reputation for being hardboiled and unfair.

15. It is generally considered that the best interview is the one in which the interviewer talks less than the person interviewed. The one of the following which is an effective device to encourage the other person to talk during the interview is for the interviewer to

(A) summarize the feelings the person has expressed, omitting details and incidentals
(B) keep silent and show no indication of his reaction to what the person is saying
(C) clearly show his approval or disapproval of what the person is saying
(D) talk to the person in terms of concepts rather than specifics.

16. Studies of groups of workers doing the same job under the same conditions have shown that there are always a few workers who have more accidents than the rest. The one of the following which is <u>least</u> likely to be a finding of such studies is that those who have the most accidents probably are

(A) middle-aged
(B) poorly adjusted to work
(C) inexperienced at the job
(D) less efficient than other workers.

17. Work measurement has been defined as "the determination of the proper amount of time and effort required for the effective performance of a specific task." Of the following, the factor which would be <u>least</u> relevant in studying an operation by means of work measurement is whether the operation is

(A) repetitive with constant standards of quality
(B) compensated for at a prevailing rate of pay
(C) routine in nature and relatively easy to perform
(D) performed in large volume.

18. Of the following, "participative management" can be defined best as a method in which

(A) subordinates have formed groups for the purpose of gaining participation in the decisions of management
(B) management makes a practice of encouraging subordinates as a group to discuss and participate in decisions on a wide variety of work-related problems
(C) managerial employees are given varied assignments on a rotating basis
(D) management gives all employees the opportunity to participate in major policy decisions.

19. "Internalized motivation" has been described as a method of motivating employees by enabling them to derive satisfaction through doing the job itself. This approach to motivating employees would require management to

(A) assume that most employees like work and enjoy doing a good job
(B) encourage competition among employees for promotions and higher salaries
(C) emphasize improved fringe benefits and conditions of work
(D) consider employee needs to be more important than organizational needs.

20. If a supervisor should find that he must issue an order his subordinates will probably resist, it is advisable for the supervisor to <u>first</u>

(A) discuss the order with his subordinates and give them an opportunity to ask questions and make objections
(B) issue the order without comment and discourage discussion and objections by his subordinates
(C) inform his subordinates that he does not agree with the order he is going to give them, but must carry out the decisions of higher authority
(D) inform his subordinates that he will take disciplinary action against those who resist carrying out the order he will present to them.

21. When a supervisor finds that his subordinates differ considerably in the amount of attention and guidance they require of him, it would be most advisable for the supervisor to

(A) adapt his supervisory practices according to individual needs
(B) give an equal amount of attention and guidance to each subordinate in order to be fair
(C) give less responsibility to subordinates who seek reassurance
(D) permit employees who prefer independence to work strictly on their own.

22. Connecting lines on an organization chart represent lines of

(A) management quality controls
(B) work flow
(C) authority and responsibility
(D) fiscal accountability.

23. "General supervision" has been defined as a method in which the supervisor makes assignments in broad, general terms and gives considerable autonomy to subordinates, in accordance with their knowledge and abilities. A supervisor who uses this method is <u>least</u> likely to

(A) do different work from that of subordinates
(B) concentrate on long-range problems
(C) exert excessive pressure on subordinates
(D) devote considerable effort to training subordinates.

24. Of the following, the most important reason why a supervisor should be cautious about giving subordinates advice about personal problems is that the

(A) subordinate may blame him if the advice turns out to be misleading
(B) supervisor should not discuss personal problems with subordinates on office time
(C) subordinate may lose confidence in his ability to perform on the job
(D) supervisor may not know enough to give helpful advice.

25. Professional or technical consultants may be used most appropriately by a human services agency to

(A) direct staff conferences centered around programs
(B) give advice regarding the quality of service or the effectiveness of plans
(C) supervise implementation of programs they have developed
(D) direct the in-service training program.

26. Of the following, the most important aim of community development is to assist a disadvantaged community to

(A) accomplish particular tasks within the service system
(B) evaluate its achievements in the light of pre-stated goals
(C) prepare itself to function as an organized, effective entity
(D) collect information about the network of social services.

27. The goal of the current reorganization of the New York City Human Resources Administration is to provide services in the neighborhoods whenever feasible, in accordance with the needs of neighborhood residents. Of the following, a desirable result of this would be

(A) variation in the combination of services offered in each neighborhood
(B) uniformity of services offered in each neighborhood
(C) considerable variation in the amount of community participation in each neighborhood
(D) decrease in the need for utilization of existing community facilities.

28. Appropriate division of functions and responsibilities between the communities and central headquarters is vital to the successful administration of a decentralized human services agency in a large urban center. The one of the following which is not an appropriate function to be performed at the community level is

(A) review of district plans for policy compliance
(B) stimulation of maximum use of both new and existing resources
(C) review of service program goals and relationships
(D) operation of community service teams.

29. A new approach to the delivery of services currently being developed by the New York City Department of Social Services is the Community Social Services Program. The one of the following which is not a major feature of this program is

(A) stationing of personnel in locations that are easily accessible to clients
(B) decentralization of authority to make decisions regarding services
(C) use of purchased services from private organizations to complement directly-delivered services
(D) preparation of a single annual Human Services Plan applicable to all Human Resources Districts.

30. The Community Social Services Program of the Department of Social Services is being implemented initially in the following Human Resources Districts:

(A) The Lower East Side, Bushwick and Parkchester
(B) East New York, Washington Heights, and the Lower East Side
(C) Washington Heights, the Lower East Side, and Bedford-Stuyvesant
(D) South Jamaica, Central Harlem and Williamsburg.

31. Community participation is a key feature of the Community Social Services Program of the Department of Social Services. Of the following, a correct statement with regard to the community participation facet of the program is that it

(A) extends to the District level the consumer involvement aspect which was previously embodied in the client advisory committees of the City's social service centers
(B) implements federal and state regulations which call for community control of planning and evaluation of services
(C) emphasizes participation of local residents in service delivery rather than in planning and evaluation
(D) makes evaluation the responsibility of consumers of social services.

32. When the citizens of a disadvantaged community generally have a positive belief that they can work together in solving their problems, and thus achieve worthwhile goals, they are usually said to be working toward a community that is

(A) complex (B) diverse (C) functional (D) underorganized.

33. Which of the following is most likely to produce an initial positive response by local residents toward a community project?

(A) Adoption of the cultural mannerisms and typical dress of local residents.
(B) Endorsement by a person or an institution trusted by local residents.
(C) Solution of a problem for the community to show good faith.
(D) Promising solutions for all the problems facing the community.

34. Of the following, the most common mistake made by participants in social controversy is to

(A) attribute a single point of view of all people of a certain group
(B) try to understand all sides of the controversy
(C) play down the controversy, in the hope that it will disappear
(D) expect a cooperative resolution of the controversy.

35. Of the following, the most probable result of citizen involvement in a community crisis situation is

(A) stronger identification with community organizations and institutions
(B) decreased effectiveness in the operation of community organizations
(C) more accurate reporting of community events by mass media
(D) loss of confidence in public agencies and private social services.

36. Research in the form of fact finding constitutes a necessary foundation for community planning and action. The one of the following which is <u>least</u> likely to be a purpose of this type of research is to

(A) evaluate services
(B) determine needs
(C) establish priorities
(D) develop a theory.

37. "Administrative decentralization" gives more authority to City agency chiefs at the district level, as contrasted with "political decentralization," which gives more decision-making power to local residents. Of the following, the most important reason for emphasizing administrative decentralization would be to

(A) remove decision-making power from local groups, because recent crises have shown that neighborhoods are not yet ready for community control
(B) provide assurance that district chiefs of City agencies coordinate their actions with their central offices
(C) encourage community participation in those neighborhoods where local residents have not taken the initiative to become involved in decion-making
(D) provide essential administrative control at the neighborhood level in order to give community groups more assurance that their projects can be carried out.

38. The "outreach" function provides a means of reaching out to disadvantaged community residents in order to become familiar with their needs and problems and to inform them of services available. Which of the following would probably perform this function most effectively in their own neighborhoods?

(A) community leaders
(B) paraprofessionals
(C) small businessmen
(D) school teachers.

39. When people of a disadvantaged community are given the opportunity to gain satisfaction and self-confidence from small accomplishments, the most probable result is

(A) discouragement of progress toward major goals
(B) development of a false sense of achievement
(C) progress toward overcoming more difficult problems
(D) development of unrealistic and unachievable ambitions.

40. At times it is necessary for a community group to form a temporary work alliance with other self-interest community groups for the mutual support of programs. Such a temporary work alliance is usually called a

(A) federation
(B) coalition
(C) union
(D) society.

GO ON TO NEXT PAGE

Answer questions 41 through 45 solely on the basis of the following paragraph.

With the generation gap yawning before us, it is well to remember that 20 years ago teenagers produced a larger proportion of nonwedlock births than today, and that the illegitimacy rate among teenagers is lower than among women in their twenties and thirties. In addition, the illegitimacy rate has risen less among teenagers than among older women.
It is helpful to note the difference between illegitimacy rate and illegitimacy ratio. The ratio is the number of illegitimate babies per 1,000 live births. The rate is the number of illegitimate births per 1,000 unmarried women of childbearing age. The ratio talks about babies, the rate talks about mothers. The ratio is useful for planning services, but worse than useless for considering trends, since it depends on the age and marital composition of the population, illegitimacy rate, and the fertility of married women. For example, the ratio among girls under 18 is bound to be high in comparison with older women, since few are married mothers. However, the illegitimacy rate is relatively low.

Of the following, the most suitable title for the foregoing passage would be

41. (A) The Generation Gap
(B) Moral Standards and Teenage Illegitimacy Ratio
(C) A Comparison of Illegitimacy Rate and Illegitimacy Ratio
(D) Causes of High Illegitimacy Rates.

42. According to the passage, which of the following statements is correct?

(A) The illegitimacy rate has fallen among women in their thirties.
(B) The illegitimacy ratio is the number of illegitimate births per 1,000 unmarried women of childbearing age.
(C) The illegitimacy ratio is partially dependent on the illegitimacy rate.
(D) The illegitimacy rate is more useful than the ratio for planning services.

43. According to the passage, of the following age groups, the illegitimacy ratio would be expected to be highest in comparison with the other groups for the group aged

(A) 17 (B) 21 (C) 25 (D) 29.

44. According to the passage, of the following age groups, the illegitimacy rate would be expected to be lowest in comparison with the other groups for the group aged

(A) 17 (B) 21 (C) 25 (D) 29.

45. As used in the foregoing passage, the underlined word composition means, most nearly,

(A) essay (B) makeup (C) security (D) happiness.

Answer questions 46 through 50 solely on the basis of the following paragraph.

In counting the poor, the Social Security Administration has developed two poverty thresholds that designate families as either "poor" or "near poor." The Administration assumed that the poor would spend the same proportion of income on food as the rest of the population but that, obviously, since their income was smaller, their range of selection would be narrower. In the Low Cost Food Plan the amount allocated to food from the average expenditure was cut to the minimum that the Agriculture Department said could still provide American families with an adequate diet. This Low Cost Plan was used to characterize the "near poor" category, and an even lower Economy Food Plan was used to characterize the "poor" category. The Economy Food Plan was based on 70 cents a person for food each day, assuming that all food would be prepared at home. The Agriculture Department estimates that only about 10 per cent of persons spending 70 cents or less for food each day actually were able to get a nutritionally adequate diet.

46. Of the following, the most suitable title for the foregoing paragraph would be

(A) The Superiority of the Economy Plan over the Lost Cost Plan
(B) The Need for a Nutritionally Adequate Diet
(C) Food Expenditures of the Poor and the Near Poor
(D) Diet in the United States.

47. According to the paragraph, the Social Security Administration assumed, in setting its poverty levels, that the poor

(A) spend a smaller proportion of income for food than the average non-poor
(B) would not eat in restaurants
(C) as a group includes only those with a nutritionally inadequate diet
(D) spend more money on food than the near poor.

48. According to the paragraph, it would be correct to state that the Low Cost Food Plan

(A) is above the minimum set by the Agriculture Department for a nutritionally adequate diet
(B) gives most people a nutritionally inadequate diet
(C) is lower than the Economy Food Plan
(D) represents the amount spent by the "near poor."

49. As estimated by the Department of Agriculture, the percentage of people spending 70 cents or less a day for food who did not get a nutritionally adequate diet was

(A) 100% (B) 90% (C) 10% (D) 0%.

50. As used in the foregoing paragraph, the underlined words allocated to mean, most nearly,

(A) offered for (B) assigned to (C) wasted on (D) spent on.

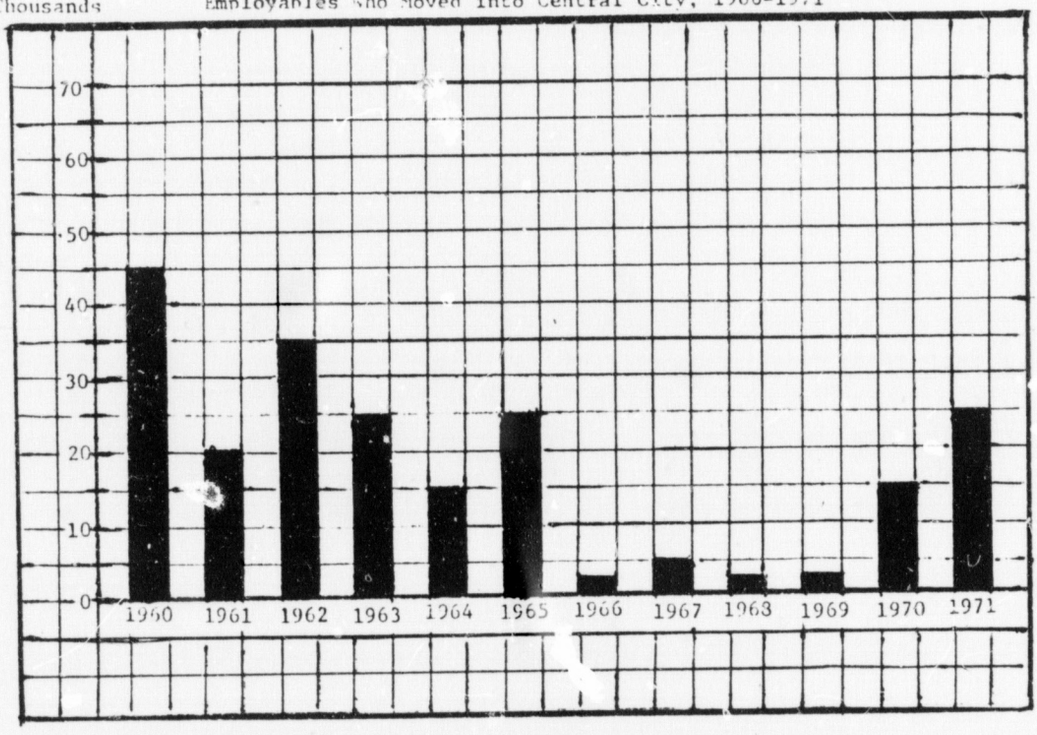
C-D-M/SUP

Plaintiffs' Exhibit 4A

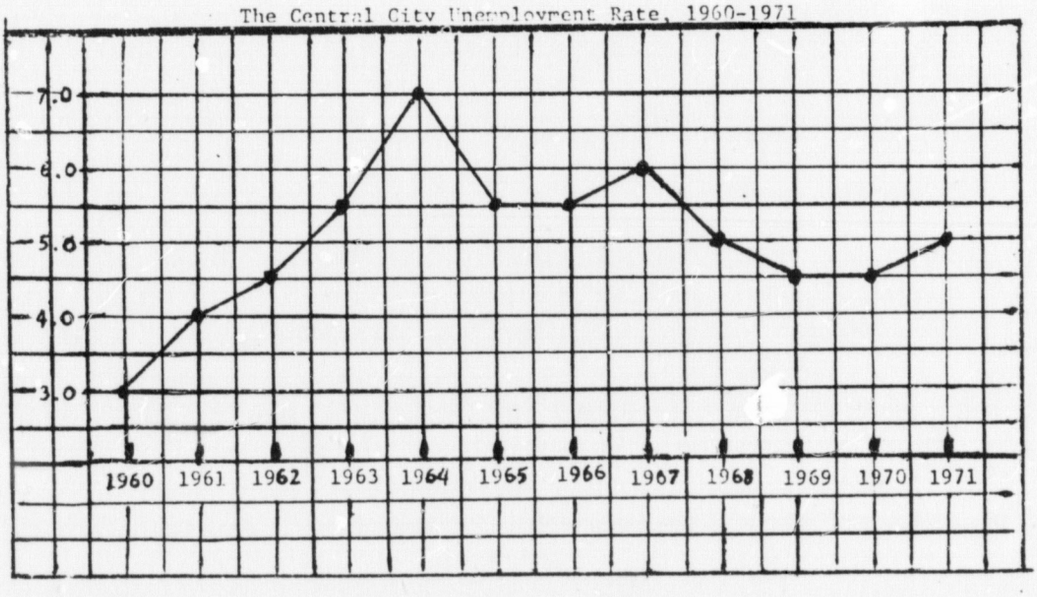
Answer questions 51 through 55 solely on the basis of the graphs presented below. Note that the unemployment rat for employables who move into Central City is the same as for the City as a whole

Employables in Thousands

Employables Who Moved into Central City, 1960-1971



The Central City Unemployment Rate, 1960-1971



51. The ratio of unemployed to employed among the employables who moved to Central City in 1961 was

(A) 1 to 3 (B) 1 to 12 (C) 1 to 24 (D) 1 to 36.

52. In 1972, if the number of employables entering the city increases to 33,000 and the unemployment rate is half the rate of 1971, the number of unemployed among the employables who move to Central City in 1972 will be

(A) 825 (B) 1,650 (C) 8,250 (D) 16,500.

53. Of the following, the year with the greatest number of unemployed among employables who moved to Central City was

(A) 1964 (B) 1965 (C) 1967 (D) 1971.

54. Of the following,the period during which the greatest change occurred in the number of unemployed among employables who moved to Central City was

(A) 1961 and 1962 (B) 1963 and 1964 (C) 1969 and 1970 (D) 1970 and 1971.

55. If there are 640 unemployed among the 23,470 people who move to Central City in 1975, the Central City unemployment rate in 1975 will be most nearly

(A) 2% (B) 3% (C) 4% (D) 5%.

C-P-M/SUP

56. The Chairman of the City's Commission on Human Rights has stated that the purpose of the ethnic survey of City employees conducted recently was to determine

(A) the degree of "ethnic group identity" among City employees belonging to various minority groups
(B) whether there has been job discrimination by City agencies against minority groups
(C) the basis for the establishment of quotas which would guarantee jobs to a certain number of minority group members
(D) a method of strengthening the merit system through establishment of discretionary hiring practices for minority group members.

57. Of the following, an important purpose of the separation of the functions of income maintenance and social services in the Department of Social Services is to

(A) give caseworkers more time to provide services and counselling to welfare families and individuals
(B) eliminate investigation of all families and individuals applying for public assistance
(C) enable the Department of Social Services to implement the State-mandated program of check pickup at the New York State Employment Service
(D) facilitate decentralization of the allocation of funds for services.

58. Changes in the Food Stamp Program made by new regulations passed this spring resulted in

(A) raising both the maximum income for non-public assistance families who would be eligible to purchase stamps and the bonus for families already participating, but also raising the cost of the stamps
(B) lowering both the maximum income for non-public assistance families who would be eligible to purchase stamps and the bonus for families already participating, but lowering the cost of the stamps
(C) raising the maximum income for non-public assistance families who would be eligible to purchase stamps and lowering the cost of the stamps, but lowering the bonus for families already participating
(D) lowering the maximum income for non-public assistance families who would be eligible to purchase stamps and raising the cost of the stamps, but also raising the bonus for families already participating.

59. The Federal Revenue Act of 1971 includes special benefits for working mothers who have child-care expenses in that it provides for deduction of

(A) specific household and child-care expenses for single, divorced or widowed parents only
(B) specific household and child-care expenses for dependents under 15
(C) carfare and other expenses relevant to the mother's employment
(D) allowance for an additional dependent for the person caring for the child.

60. A serious objection raised by those who consider the proposal for revenue sharing by the Federal government to be a major threat to welfare reform is that

(A) states and localities would not have sufficient control over how the money is spent
(B) increased state and local control over expenditures has consistently worked against disadvantaged and minority groups
(C) there are no Federal provisions for enforcement of compliance with regard to discrimination for reason of race, color or national origin
(D) the state governors would not be able to set their own priorities or monitor violations by local officials.

C-P-M/SUP

61. According to the Department of Social Services, of the following, the smallest number of recipients of public assistance consists of

(A) children under 21
(B) aged adults
(C) employables
(D) adults caring for others.

62. Responsibility for quality control studies of public assistance clients' eligibility in New York City by means of interviews and analysis of case records is being taken over by the

(A) U.S. Department of Health, Education and Welfare
(B) New York State Department of Social Services
(C) New York City Department of Investigation
(D) Bureau of Income Maintenance of the Human Resources Administration.

63. The one of the following which is not a current method being used by the Human Resources Administration in its efforts to reduce welfare costs is

(A) improvement of managerial capability
(B) simplification of procedures
(C) insistence on greater accountability
(D) full investigation of all applicants for assistance.

64. The one of the following which would be most likely to reduce the tendency of the unemployed poor to migrate to urban centers is

(A) increased federal subsidies to the small farmer
(B) unionization of migrant farm workers
(C) a national guaranteed income maintenance program
(D) an increase in the national minimum wage.

65. According to the most recent U.S. Census Bureau Report, economic and educational gains made between 1960 and 1970 by Puerto Ricans living in New York City, as compared with the Blacks, were

(A) considerably greater
(B) considerably smaller
(C) about the same
(D) slightly greater.

66. Of the following modern child-care experts would consider the least desirable setting for treatment of most juvenile offenders while under professional supervision to be

(A) the family's home
(B) a group residence
(C) a foster home
(D) a large institution.

67. New York State has instituted a program of "work relief," which requires all Home Relief recipients who are eligible to work, but cannot find jobs, to "work off" their welfare checks on non-salaried work projects. This approach has met with considerable opposition, mainly because those who oppose it believe that the recipients

(A) may take away jobs which were formerly performed by paid employees
(B) are unskilled and therefore qualified for an extremely limited number of work assignments
(C) are likely to be resentful and inefficient in carrying out their assignments
(D) will receive no improvement in financial status and no assurance of stable employment, so that they can be removed from the welfare rolls

68. A significant aspect of an amendment to the Social Security Act which became effective July 1, 1972 is that it introduces into the Act a program of

(A) public service jobs
(B) income maintenance
(C) medical assistance to the aged
(D) aid to dependent children.

69. During the past few years, the U.S. Supreme Court has made a series of key rulings that directly affect welfare clients. None of these rulings has been concerned with

(A) fair hearings
(B) state residence requirements
(C) home inspections
(D) the family assistance plan.

70. A demonstration program for public assistance recipients in New York City recently approved by the U.S. Department of Health, Education, and Welfare which has been the subject of considerable controversy is the

(A) Incentives for Independence Program
(B) Haitian Training Project
(C) Work Incentive Program
(D) Demonstration Work Project.

GO ON TO THE NEXT PAGE

71. Acceptance of which of the following services provided by the Department of Social Services for public assistance clients is not voluntary on the part of the clients?

(A) Home management
(B) Family planning
(C) Child protection
(D) Educational counselling.

72. The one of the following which is not part of the organization of the Youth Services Agency is the

(A) Neighborhood Youth Corps
(B) Recreation Support Program
(C) Youth Development Centers
(D) Youth Vocational Training Program.

73. The one of the following which is not included under the recently organized Office of Special Services for Adults in the Department of Social Services is

(A) senior citizen programs
(B) Medicare
(C) foster care for the aged and disable
(D) adult institutions.

74. Several juvenile detention centers formerly run by the New York State Office of Probation are now operated by the

(A) Youth Services Agency
(B) Department of Social Services
(C) Office of Child Development
(D) Judicial Conference.

75. Decentralized administration of the City's anti-poverty efforts is provided by the

(A) Community Corporations
(B) Council Against Poverty
(C) Human Resources District Councils
(D) Neighborhood Youth Corps.

P/SR.,SUP

76. The component of the Human Resources Administration which is authorized by the Mayor as the agency to receive community action funds from the federal government is the

(A) Council Against Poverty
(B) Community Development Agency
(C) Manpower and Career Development Agency
(D) Agency for Child Development.

77. The Equal Employment Opportunity Commission is correctly described as the

(A) Federal agency which acts on charges of discrimination in employment
(B) State agency which operates employment and specialized placement offices
(C) City agency which develops job opportunities for underemployed persons
(D) City agency which acts on charges of discrimination in employment.

78. The recent reorganization of the Youth Services Agency emphasized administrative changes that would allow for

(A) expansion of counselling, psychological and psychiatric services to anti-social youth
(B) greater community responsibility for and participation in the delivery of services to youth
(C) more emphasis on direct services to street youth and fighting gangs
(D) tablishment of youth narcotics addiction prevention and treatment programs.

79. The basic reason for the establishment of the Agency for Child Development as part of the Human Resources Administration was to

(A) provide a single agency to consolidate and administer programs for preschool-age children
(B) establish a Commission to insure maximum parent and community involvement in programs for children
(C) take over the licensing of both public and private programs for preschool-age children
(D) insure a diversity of programs to meet the needs of a broad spectrum of children.

80. The main functions of the Manpower and Career Development Agency (MCDA) are to

(A) run manpower and recruitment centers under contract with private organizations
(B) train the unskilled, upgrade existing skills, develop job opportunities, and and place newly-trained people in jobs
(C) provide remedial education and follow-up for disadvantaged potential college students, vocational counselling and testing for veterans and ex-addicts
(D) provide job development, interviewing and placement, and manpower research services.

P/SUP

ANSWER SHEET COLLECTION: You may take the question booklet with you. When you have completed the test, remain seated and summon the monitor. The monitor will pick up your answer sheet. Leave the building quickly and quietly. You should make a note of your application number and include this number in any future correspondence with the Department of Personnel with respect to this examination.

KEY ANSWERS AND PROTESTS: The proposed key answers to this test will be posted on the Official Notices Bulletin Board of the Application Section of the Department of Personnel, 49 Thomas Street, New York, N.Y., beginning 10/25/72 for a period of three days. Candidates who wish to file protests against the proposed key answers must submit in writing such protests together with their reasons for such protests. Such protests must be postmarked not later than 11/15/72, and must contain the candidate's application number. Protests should be addressed to the Department of Personnel, 55 Thomas Street, New York N.Y. 10013, with the examination title written on the face of the envelope. Protests postmarked later than 11/15/72 will not be considered.

Protests should be clear and legible, preferably typewritten. Each protest must begin on a separate page and state the number of the question being protested. Protests should begin by indicating which answer the candidate considers correct, and should present reasoned arguments and clearly identify any quoted sources or authorities. Each page must be signed by the candidate and state his address. Only protests submitted by individual candidates will be considered.

After the Department of Personnel has considered all protests, properly filed, it will make a final determination thereon and will thereafter post the final key on the Official Notices Bulletin Board of the Application Section of the Department of Personnel for a period of three days. Such posting constitutes official public notice by the Department of Personnel to all candidates of the final determination in this connection.

The Department of Personnel, in establishing key answers to this test, reserves the right to determine which of the answers listed for each question is to be deemed and accredited as acceptable, and whether more than one of the answers listed for each question is to be deemed acceptable and accredited as such. The Department further reserves the right to cancel and annul any question whenever, upon inquiry, it deems that none of the listed answers thereto can properly be considered acceptable.

Please do not telephone the Department of Personnel requesting information as to the progress of the rating of this examination. Such information will not be available to candidates. All candidates in this examination will be notified individually by mail of the rating they receive when the rating of all candidates in the examination has been completed. Notify this department promptly in writing of any change in your address to insure prompt delivery of such notice.

H,SR

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Plaintiffs' Exhibit 6A

[SECOND AMENDED NOTICE OF EXAMINATION NUMBER 2013]

OFFICIAL
Cal.#678-9.28.72
56040

Experience Form A

Notice of Examination
2nd Amended Notice
(September 29, 1972)

No. 2013

SUPERVISING HUMAN RESOURCES SPECIALIST

Candidates who filed previously need not file again.

In conjunction with the holding of this examination, departmental promotion examinations will be held. Although names appearing on the promotion lists will receive prior consideration, it is expected that there will be a sufficient number of vacancies so that the open-competitive list will be used.

Candidates who wish to take a portion of the written test in a particular foreign language must indicate their choice of language on the application form. If at least five percent of the applicants for the written test request that it be given in a specific foreign language, 25% of the questions will be printed in the specific foreign language, in addition to being printed in English.

SALARY AND VACANCIES: The appointment rate for this position is $12,500 per annum. Numerous vacancies exist in the Human Resources Administration, its constituent agencies and other City departments.

APPLICATIONS: Received on September 29 and October 2, 1972, in person only, in Room 219, Department of Personnel, 55 Thomas Street, New York, N.Y. 10013, from 9:30 a.m. to 4 p.m. No applications issued or received by mail.

DATE OF TEST: The written test is expected to be held on October 14, 1972. This date is tentative only and may be changed if circumstances so demand.

PROMOTION OPPORTUNITIES: Employees in the title of Supervising Human Resources Specialist are accorded promotional opportunities, when eligible, to the title of Principal Human Resources Specialist.

MINIMUM REQUIREMENTS: A baccalaureate degree issued after completion of a four-year course in an accredited college, and three years of full-time experience in a professional, technical or administrative capacity in one or more of the following areas: community planning, development, organization or relations; educational counseling or testing; intergroup relations; business, personnel or public administration; fiscal or financial control; journalism; industrial, labor or public relations; urban development or renewal; or social, health or educational action or planning, or a satisfactory equivalent combination of education and experience. However, at least one year's experience must have been in the direct servicing of a disadvantaged client population similar to that serviced by the Human Resources Administration or one of its constituent agencies in a program relating to community action or development, manpower and skills development, or educational or social change, or in the direct management or technical support of such a program. All candidates must meet the specialized one year's experience requirement as cited above. Relevant professional, technical or administrative experience may be substituted for college or high school education on a year for year basis. Graduate study in an accredited college may be substituted for up to one year of the required general experience.

Experience Form A must be filed with the application. Candidates are advised to make full and complete statements concerning their volunteer, part-time and full-time experience on the Experience Form A. If additional space is required, candidates can use additional blank pages.

The minimum requirements must be met by the last date for the receipt of applications. All candidates who file applications will be summoned for the written test prior to a determination of whether or not they meet the minimum requirements. The experience papers of passing candidates only will be evaluated.

DUTIES AND RESPONSIBILITIES: Under direction, with broad discretion for the use of independent judgment and initiative, supervises and directs a group or groups of Senior Human Resources Specialists and lower-level employees of the Human Resources Occupational Group and/or other employees, in planning, executing and evaluating programs relative to one or more of the following areas; manpower and career development, management, community development, or program planning and analysis; or performs complex and highly responsible staff assignments in relation to any of the programs listed above; performs related work.

EXAMPLES OF TYPICAL TASKS: Supervises a group or groups of Senior Human Resources Specialists and lower-level employees of the Human Resources Occupational Group and/or other employees in planning, executing and evaluating any one or several of the above stated programs; plans, assigns and reviews the regular and special work of the group and, as necessary, trains and instructs members of the group; coordinates all the activities, functions and reports, including research, of assigned group; develops and implements systems to be used, policy procedures and overall plan of operations; assesses and determines goals and priorities; adopts and translates research knowledge into working practicalities; maintains liaison with business, labor and industrial organizations, civic, private and community organizations and agencies to negotiate contracts; renders advice on program policies, plans and budgets; seeks improvement in facilities and activities; reviews compliance with terms of contracts; may provide professional expertise in the area of specialty; interviews and participates in the selection of professional or clerical employees, clients and trainees; assists the director or assistant director in formulating policy; prepares summaries of program plans, research and evaluation reports for use by the director and/or commissioner before governmental, private or civic organizations; designs, develops and implements projects involving complex, sensitive and far-reaching problems and policies related to the area of specialty; meets with officials and respresentatives of private and public agencies and community groups to accomplish any of the above, to provide functional services, or to obtain feedback as to policies, programs and procedures; may assume the responsibilities of immediate supervisor in the absence of that individual.

TESTS: Written, weight 50, 70% required; oral, weight 50, 70% required. The written test will be of the multiple-choice type and may include questions in the following areas as they relate to Supervising Human Resources Specialist: functions of relevant public and private agencies; current developments and problems in the field of human services; community relations and organization; judgment in on-the-job situations; techniques of staff development, supervision and guidance; language usage, including vocabulary and reading comprehension; arithmetic computations and interpretation of tables, charts and graphs; and other related areas.

The factors in the oral test will be speech, manner and judgment. The oral test will be designed to measure ability to respond to stress situations, to handle and supervise people, to meet effectively with high administrative officials, to conduct conferences, to deal with community groups, etc. Only those candidates who pass the written test will be summoned for the oral test.
The pertinent sections of the General Examination Regulations and the General Provisions of the Notice of Examination are also part of this Notice.

CITY CIVIL SERVICE COMMISSION: Harry I. Bronstein, Chairman;
George Henry, Jr., Secretary.

195ad1

Plaintiffs' Exhibit 6B

[EXAMINATION NUMBER 2013]

Application No. _____

Room No. _____

Seat No. _____

City of New York
Department of Personnel

EXAMINATION NO. 2013 - OPEN COMPETITIVE (O.C.) EXAMINATION FOR
SUPERVISING HUMAN RESOURCES SPECIALIST

EXAMINATION NO. 2012 - OPEN COMPETITIVE (O.C.) EXAMINATION FOR
SUPERVISING HUMAN RESOURCES SPECIALIST (MANPOWER DEVELOPMENT AND TRAINING)

Date: October 14, 1972 Total Time Allowed: 2½ Hours

Written Test - Weight 50, 70% Required

GENERAL INSTRUCTIONS

Fill in your application number, room number, and seat number at the top of this page.

BELLS:
- First Bell: Test booklet given out. READ THIS PAGE ONLY.
- Second Bell: Turn the page and begin work.
- Third Bell: End of test. Stop all work. This bell is rung 2½ hours after the second bell. If you finish before, raise your hand to let the monitor know.

TEST BOOKLET: This test booklet has both tests and there should be 21 pages. All questions are of equal weight. Check your test booklet after the second bell to be sure it has all the pages and is not defective.

ANSWER THE QUESTIONS AS INDICATED BELOW:

IF YOU ARE TAKING ONLY EXAM. NO. 2013 - O.C. SUPERVISING HUMAN RESOURCES SPECIALIST: ANSWER QUESTIONS 1-80

IF YOU ARE TAKING ONLY EXAM. NO. 2012 - O.C. HUMAN RESOURCES SPECIALIST (MDT): ANSWER QUESTIONS 1-70 and 81-90

OR: If you are taking two or more tests follow the special instructions you have been given concerning questions to answer and time allowed.

You must hand in your test booklet, answer sheet, and all scrap paper after you finish. You may take nothing from the room with you except the "Candidate's Personal Record of Answers" sheet, on which you may make a record of your answers for future reference.

WARNING: Smoking is NOT allowed. You will be disqualified if you copy answers from anyone or use books or notes.

It is against the law to take the test for somebody else or to let somebody else take the test for you.

This test booklet is the property of the Department of Personnel and you must turn it in at the end of the test. It is worth more than $250. You will be subject to penalty if you do not turn it in.

After the test starts, nobody can leave till after 10:30 a.m. Nobody can come in after 10:30 a.m. If you want to drop out of the test and do not want to have your answers rated, write 'I withdraw' on your answer sheet and sign your name.

DO NOT TURN THE PAGE UNTIL THE SECOND BELL IS RUNG

Plaintiffs' Exhibit 6B

DIRECTIONS FOR ANSWERING QUESTIONS

Answer all questions on the official Answer Sheet before the third bell has rung. ONLY YOUR ANSWER SHEET WILL BE RATED.

For each question, select that answer which you believe to be the acceptable one among those listed and note the capital letter preceding your selected answer.

Then, on the official answer sheet, find the row numbered the same as the question and record your answer by blackening the space between the dotted lines immediately to the right of the capital letter representing your selected answer, using a No. 2 pencil.

When recording your answer with a No. 2 pencil, fill in the entire space between the dotted lines and the full length of the lines by pressing firmly on the pencil and using several strokes.

IF YOU WISH TO CHANGE AN ANSWER, ERASE THE OLD ANSWER COMPLETELY. Do not cross it out. Then record your new answer in the proper space.

Do not make any marks except your answer. More than one answer to a question or improperly erased answers or stray marks caused by resting the pencil on the paper may be counted as wrong answers.

Use pen (blue or black ink) for filling in the headings on your answer sheet but use only the No. 2 pencil for recording your answers.

Do not fold the answer sheet or damage the edges because the rating is done by machine.

Since there are only 4 answers listed for each question, the spaces to the right of the letter D on the answer sheet are not used for this examination.

To help you understand the procedure, the following sample item is given:

SAMPLE 0: The sum of 5 and 3 is

(A) 2 (B) 8 (C) 9 (D) 11.

The sum of 5 and 3 is 8, so that the acceptable answer is shown thus on your answer sheet:

SAMPLE 0: A ===== B ▬▬▬ C ===== D =====

C O N T I N U E O N

F O L L O W I N G

P A G E

1. Of the following, the best time for a supervisor to give advice about a job-related problem which a subordinate has brought up during an interview is usually after the

   (A) subordinate has told him all the facts
   (B) supervisor has determined the employee's unconscious motives for bringing up the problem
   (C) employee has submitted a written report on the problem
   (D) supervisor has discussed the problem with his superior.

2. Of the following, the situation in which a supervisor would have to make the greatest effort in order to communicate effectively with his subordinates would occur when

   (A) there is a large gap between the supervisor's background and experience and that of his subordinates
   (B) the subordinates have already learned about the information through informal channels
   (C) the subordinates have completed their education much more recently than the supervisor
   (D) the supervisor has been with the organization for a much shorter time than most of his subordinates.

3. Of the following, the factor which would be most critical in influencing whether subordinates accept or resent a supervisor's authority is the

   (A) manner in which the supervisor uses his authority
   (B) frequency with which the supervisor ignores minor violations of rules
   (C) degree of delegation to subordinates by the supervisor
   (D) cultural attitudes of individual subordinates toward authority.

4. In which one of the following situations would employees be most likely to accept temporarily difficult working conditions without excessive complaining?

   (A) The organization has a strict policy of disciplinary action against uncooperative employees.
   (B) Employees do not have the right to take part in "job actions" or strikes.
   (C) An atmosphere of mutual trust and good human relations exists between subordinates and managerial personnel.
   (D) Relationships between subordinates and managerial personnel are strictly businesslike.

5. Assume that an agency has been reorganized into integrated work teams. Instead of assigning employees performing the same task to a single unit, such as a typing pool, those performing different but interdependent parts of an activity are put into the same work group. Of the following, the most probable result of such a reorganization would be to

   (A) permit more efficient work scheduling
   (B) achieve greater economy
   (C) decrease training costs
   (D) improve employee job satisfaction.

6. The need for identification with a work group has been found to be one of the most powerful on-the-job motivations. Of the following, the employee who is <u>least</u> likely to have a strong attachment to his work group is one who

   (A) is at the very bottom of the organization's promotional ladder
   (B) belongs to a small department
   (C) works with others of similar background and interests
   (D) has worked for the organization for a considerable period of time.

7. According to many management experts, the one of the following situations which would be the most significant indication that employees of an organization are dissatisfied with their supervisors and feel that they are being treated unfairly is one in which

(A) employees submit a large number of work-related suggestions
(B) many employees are unproductive and seem to be continually loafing on the job
(C) union membership has recently increased
(D) turnover is low in spite of a comparatively good labor market.

8. A supervisor who has informal, friendly relationships with his subordinates is conducting himself

(A) appropriately; good informal relationships set the stage for better communication between the supervisor and subordinates on work-related problems
(B) inappropriately; subordinates who have informal relationships with their supervisor are not likely to accept his authority
(C) appropriately; friendly relationships between the supervisor and his subordinates will create a true feeling of equality between them
(D) inappropriately; subordinates are likely to become suspicious of insincerity and fearful of being manipulated.

9. Specialization is a commonly-used method of increasing productivity and efficiency in a large organization. Task specialization means that separate and comparatively simple parts of a more complex job are performed by different employees. Of the following, this type of specialization probably would not

(A) reduce training costs
(B) permit the use of more specialized equipment
(C) simplify the development of job controls
(D) give most employees a greater sense of accomplishment.

10. Some management experts who have studied informal communication patterns in large organizations believe that the office grapevine is an effective means of communication. Of the following, an important function performed by the grapevine is to

(A) permit feedback and spread information faster than most formal communication systems
(B) give employees important information from reliable sources
(C) permit management to identify rumor-mongers and troublemakers
(D) bring informal leaders to the attention of management.

11. Recent studies of morale and productivity tend to show that

(A) the correlation between morale and productivity is rather low
(B) high morale is associated with high productivity
(C) low morale is associated with high productivity
(D) low morale is associated with low productivity.

12. Research studies have indicated that teamwork among employees is most likely to result in higher productivity in a situation where

(A) employees accept as legitimate management's demands for higher productivity
(B) management strongly encourages the workers' competitive spirit
(C) employees are unified for the purpose of protecting themselves against management's demands
(D) management does not encourage employees to make independent decisions.

C 2-71 SP, SUP

13. The relationship between boredom on the job and fatigue is correctly stated as follows:

(A) Boredom usually results in increased fatigue.
(B) A worker usually becomes bored when he expends a minimum of physical energy.
(C) Fatigue usually results in boredom.
(D) A worker who is bored does not usually become fatigued.

14. The "halo effect" can properly be suspected of harming supervisor-subordinate relationships when the supervisor

(A) does not discriminate between the good and poor work of an employee considered by him to be generally superior
(B) expects his subordinates to treat him in an impersonal and formal manner
(C) hesitates to discipline employees because of an extreme need for them to like him
(D) is unable to gain his employees' confidence because he cannot shed his reputation for being hardboiled and unfair.

15. It is generally considered that the best interview is the one in which the interviewer talks less than the person interviewed. The one of the following which is an effective device to encourage the other person to talk during the interview is for the interviewer to

(A) summarize the feelings the person has expressed, omitting details and incidentals
(B) keep silent and show no indication of his reaction to what the person is saying
(C) clearly show his approval or disapproval of what the person is saying
(D) talk to the person in terms of concepts rather than specifics.

16. Studies of groups of workers doing the same job under the same conditions have shown that there are always a few workers who have more accidents than the rest. The one of the following which is <u>least</u> likely to be a finding of such studies is that those who have the most accidents probably are

(A) middle-aged
(B) poorly adjusted to work
(C) inexperienced at the job
(D) less efficient than other workers.

17. Work measurement has been defined as "the determination of the proper amount of time and effort required for the effective performance of a specific task." Of the following, the factor which would be <u>least</u> relevant in studying an operation by means of work measurement is whether the operation is

(A) repetitive with constant standards of quality
(B) compensated for at a prevailing rate of pay
(C) routine in nature and relatively easy to perform
(D) performed in large volume.

18. Of the following, "participative management" can be defined best as a method in which

(A) subordinates have formed groups for the purpose of gaining participation in the decisions of management
(B) management makes a practice of encouraging subordinates as a group to discuss and participate in decisions on a wide variety of work-related problems
(C) managerial employees are given varied assignments on a rotating basis
(D) management gives all employees the opportunity to participate in major policy decisions.

19. "Internalized motivation" has been described as a method of motivating employees by enabling them to derive satisfaction through doing the job itself. This approach to motivating employees would require management to

(A) assume that most employees like work and enjoy doing a good job
(B) encourage competition among employees for promotions and higher salaries
(C) emphasize improved fringe benefits and conditions of work
(D) consider employee needs to be more important than organizational needs.

20. If a supervisor should find that he must issue an order his subordinates will probably resist, it is advisable for the supervisor to first

(A) discuss the order with his subordinates and give them an opportunity to ask questions and make objections
(B) issue the order without comment and discourage discussion and objections by his subordinates
(C) inform his subordinates that he does not agree with the order he is going to give them, but must carry out the decisions of higher authority
(D) inform his subordinates that he will take disciplinary action against those who resist carrying out the order he will present to them.

21. When a supervisor finds that his subordinates differ considerably in the amount of attention and guidance they require of him, it would be most advisable for the supervisor to

(A) adjust his supervisory practices according to individual needs
(B) give an equal amount of attention and guidance to each subordinate in order to be fair
(C) give less responsibility to subordinates who seek reassurance
(D) permit employees who prefer independence to work strictly on their own.

22. Connecting lines on an organization chart represent lines of

(A) management quality controls
(B) work flow
(C) authority and responsibility
(D) fiscal accountability.

23. "General supervision" has been defined as a method in which the supervisor makes assignments in broad, general terms and gives considerable autonomy to subordinates, in accordance with their knowledge and abilities. A supervisor who uses this method is least likely to

(A) do different work from that of subordinates
(B) concentrate on long-range problems
(C) exert excessive pressure on subordinates
(D) devote considerable effort to training subordinates.

24. Of the following, the most important reason why a supervisor should be cautious about giving subordinates advice about personal problems is that the

(A) subordinate may blame him if the advice turns out to be misleading
(B) supervisor should not discuss personal problems with subordinates on office time
(C) subordinate may lose confidence in his ability to perform on the job
(D) supervisor may not know enough to give helpful advice.

25. Professional or technical consultants may be used most appropriately by a human services agency to

(A) direct staff conferences centered around programs
(B) give advice regarding the quality of service or the effectiveness of plans
(C) supervise implementation of programs they have developed
(D) direct the in-service training program.

26. Of the following, the most important aim of community development is to assist a disadvantaged community to

(A) accomplish particular tasks within the service system
(B) evaluate its achievements in the light of the stated goals
(C) prepare itself to function as an organized, effective entity
(D) collect information about the network of social services

27. The goal of the current reorganization of the New York City Human Resources Administration is to provide services in the neighborhoods whenever feasible, in accordance with the needs of neighborhood residents. Of the following, a desirable result of this would be

(A) variation in the combination of services offered in each neighborhood
(B) uniformity of services offered in each neighborhood
(C) considerable variation in the amount of community participation in each neighborhood
(D) decrease in the need for utilization of existing community facilities.

28. Appropriate division of functions and responsibilities between the communities and central headquarters is vital to the successful administration of a decentralized human services agency in a large urban center. The one of the following which is not an appropriate function to be performed at the community level is

(A) review of district plans for policy compliance
(B) stimulation of maximum use of both new and existing resources
(C) review of service program goals and relationships
(D) operation of community service teams.

29. A new approach to the delivery of services currently being developed by the New York City Department of Social Services is the Community Social Services Program. The one of the following which is not a major feature of this program is

(A) stationing of personnel in locations that are easily accessible to clients
(B) decentralization of authority to make decisions regarding services
(C) use of purchased services from private organizations to complement directly-delivered services
(D) preparation of a single annual Human Services Plan applicable to all Human Resources Districts.

30. The Community Social Services Program of the Department of Social Services is being implemented initially in the following Human Resources Districts:

(A) The Lower East Side, Bushwick and Parkchester
(B) East New York, Washington Heights, and the Lower East Side
(C) Washington Heights, the Lower East Side, and Bedford-Stuyvesant
(D) South Jamaica, Central Harlem and Williamsburg.

31. Community participation is a key feature of the Community Social Services Program of the Department of Social Services. Of the following, a correct statement with regard to the community participation facet of the program is that it

(A) extends to the District level the consumer involvement aspect which was previously embodied in the client advisory committees of the City's social service centers
(B) implements federal and state regulations which call for community control of planning and evaluation of services
(C) emphasizes participation of local residents in service delivery rather than in planning and evaluation
(D) makes evaluation the responsibility of consumers of social services.

32. When the citizens of a disadvantaged community generally have a positive belief that they can work together in solving their problems, and thus achieve worthwhile goals, they are usually said to be working toward a community that is

(A) complex (B) diverse (C) functional (D) underorganized.

33. Which of the following is most likely to produce an initial positive response by local residents toward a community project?

(A) Adoption of the cultural mannerisms and typical dress of local residents.
(B) Endorsement by a person or an institution trusted by local residents.
(C) Solution of a problem for the community to show good faith.
(D) Promising solutions for all the problems facing the community.

34. Of the following, the most common mistake made by participants in social controversy is to

(A) attribute a single point of view of all people of a certain group
(B) try to understand all sides of the controversy
(C) play down the controversy, in the hope that it will disappear
(D) expect a cooperative resolution of the controversy.

35. Of the following, the most probable result of citizen involvement in a community crisis situation is

(A) stronger identification with community organizations and institutions
(B) decreased effectiveness in the operation of community organizations
(C) more accurate reporting of community events by mass media
(D) loss of confidence in public agencies and private social services.

36. Research in the form of fact finding constitutes a necessary foundation for community planning and action. The one of the following which is <u>least</u> likely to be a purpose of this type of research is to

(A) evaluate services
(B) determine needs
(C) establish priorities
(D) develop a theory.

37. "Administrative decentralization" gives more authority to City agency chiefs at the district level, as contrasted with "political decentralization," which gives more decision-making power to local residents. Of the following, the most important reason for emphasizing administrative decentralization would be to

(A) remove decision-making power from local groups, because recent crises have shown that neighborhoods are not yet ready for community control
(B) provide assurance that district chiefs of City agencies coordinate their actions with their central offices
(C) encourage community participation in those neighborhoods where local residents have not taken the initiative to become involved in decion-making
(D) provide essential administrative control at the neighborhood level in order to give community groups more assurance that their projects can be carried out.

38. The "outreach" function provides a means of reaching out to disadvantaged community residents in order to become familiar with their needs and problems and to inform them of services available. Which of the following would probably perform this function most effectively in their own neighborhoods?

(A) community leaders
(B) paraprofessionals
(C) small businessmen
(D) school teachers.

39. When people of a disadvantaged community are given the opportunity to gain satisfaction and self-confidence from small accomplishments, the most probable result is

(A) discouragement of progress toward major goals
(B) development of a false sense of achievement
(C) progress toward overcoming more difficult problems
(D) development of unrealistic and unachievable ambitions.

40. At times it is necessary for a community group to form a temporary work alliance with other self-interest community groups for the mutual support of programs. Such a temporary work alliance is usually called a

(A) federation
(B) coalition
(C) union
(D) society.

GO ON TO NEXT PAGE

Answer questions 41 through 45 solely on the basis of the following paragraph.

With the generation gap yawning before us, it is well to remember that 20 years ago teenagers produced a larger proportion of nonwedlock births than today, and that the illegitimacy rate among teenagers is lower than among women in their twenties and thirties. In addition, the illegitimacy rate has risen less among teenagers than among older women.
It is helpful to note the difference between illegitimacy rate and illegitimacy ratio. The ratio is the number of illegitimate babies per 1,000 live births. The rate is the number of illegitimate births per 1,000 unmarried women of childbearing age. The ratio talks about babies, the rate talks about mothers. The ratio is useful for planning services, but worse than useless for considering trends, since it depends on the age and marital composition of the population, illegitimacy rate, and the fertility of married women. For example, the ratio among girls under 18 is bound to be high in comparison with older women, since few are married mothers. However, the illegitimacy rate is relatively low.

Of the following, the most suitable title for the foregoing passage would be

41. (A) The Generation Gap
(B) Moral Standards and Teenage Illegitimacy Ratio
(C) A Comparison of Illegitimacy Rate and Illegitimacy Ratio
(D) Causes of High Illegitimacy Rates.

42. According to the passage, which of the following statements is correct?

(A) The illegitimacy rate has fallen among women in their thirties.
(B) The illegitimacy ratio is the number of illegitimate births per 1,000 unmarried women of childbearing age.
(C) The illegitimacy ratio is partially dependent on the illegitimacy rate.
(D) The illegitimacy rate is more useful than the ratio for planning services.

43. According to the passage, of the following age groups, the illegitimacy ratio would be expected to be highest in comparison with the other groups for the group aged

(A) 17 (B) 21 (C) 25 (D) 29.

44. According to the passage, of the following age groups, the illegitimacy rate would be expected to be lowest in comparison with the other groups for the group aged

(A) 17 (B) 21 (C) 25 (D) 29.

45. As used in the foregoing passage, the underlined word composition means, most nearly,

(A) essay (B) makeup (C) security (D) happiness.

Answer questions 46 through 50 solely on the basis of the following paragraph.

In counting the poor, the Social Security Administration has developed two poverty thresholds that designate families as either "poor" or "near poor." The Administration assumed that the poor would spend the same proportion of income on food as the rest of the population but that, obviously, since their income was smaller, their range of selection would be narrower. In the Low Cost Food Plan the amount allocated to food from the average expenditure was cut to the minimum that the Agriculture Department said could still provide American families with an adequate diet. This Low Cost Plan was used to characterize the "near poor" category, and an even lower Economy Food Plan was used to characterize the "poor" category. The Economy Food Plan was based on 70 cents a person for food each day, assuming that all food would be prepared at home. The Agriculture Department estimates that only about 10 percent of persons spending 70 cents or less for food each day actually were able to get a nutritionally adequate diet.

46. Of the following the most suitable title for the foregoing paragraph would be

(A) The Superiority of the Economy Plan over the Lost Cost Plan
(B) The Need for a Nutritionally Adequate Diet
(C) Food Expenditures of the Poor and the Near Poor
(D) Diet in the United States.

47. According to the paragraph, the Social Security Administration assumed, in setting its poverty levels, that the poor

(A) spend a smaller proportion of income for food than the average non-poor
(B) would not eat in restaurants
(C) as a group includes only those with a nutritionally inadequate diet
(D) spend more money on food than the near poor.

48. According to the paragraph, it would be correct to state that the Low Cost Food Plan

(A) is above the minimum set by the Agriculture Department for a nutritionally adequate diet
(B) gives most people a nutritionally inadequate diet
(C) is lower than the Economy Food Plan
(D) represents the amount spent by the "near poor."

49. As estimated by the Department of Agriculture, the percentage of people spending 70 cents or less a day for food who did not get a nutritionally adequate diet was

(A) 100% (B) 90% (C) 10% (D) 0%.

50. As used in the foregoing paragraph, the underlined words allocated to mean, most nearly,

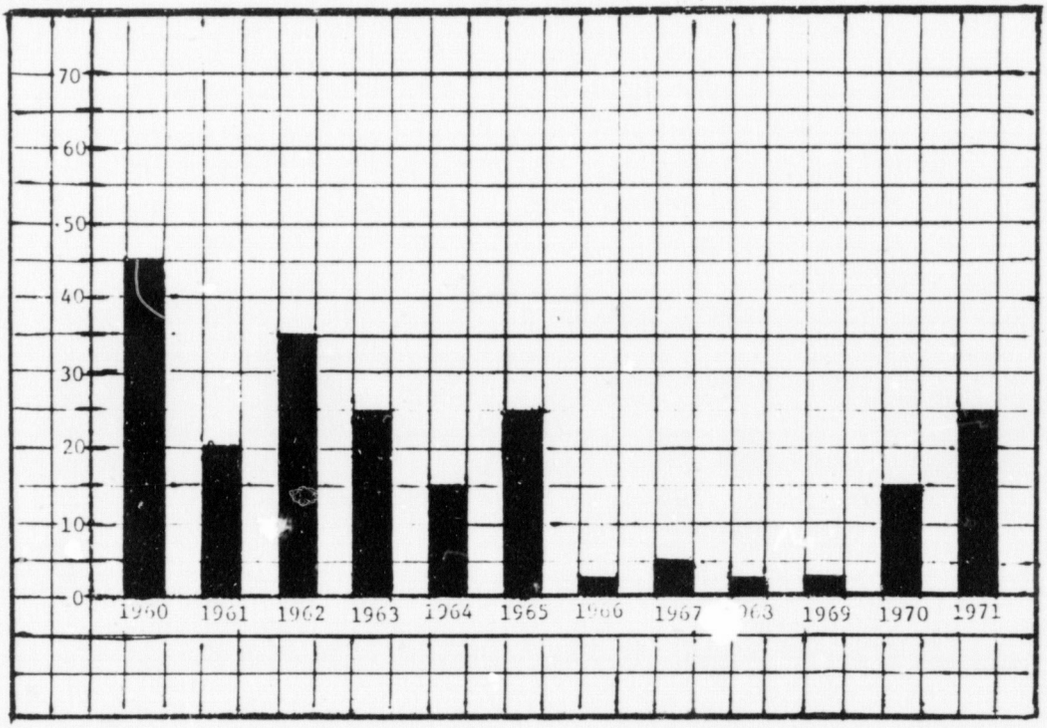
(A) offered for (B) assigned to (C) wasted on (D) spent on.

Plaintiffs' Exhibit 6B

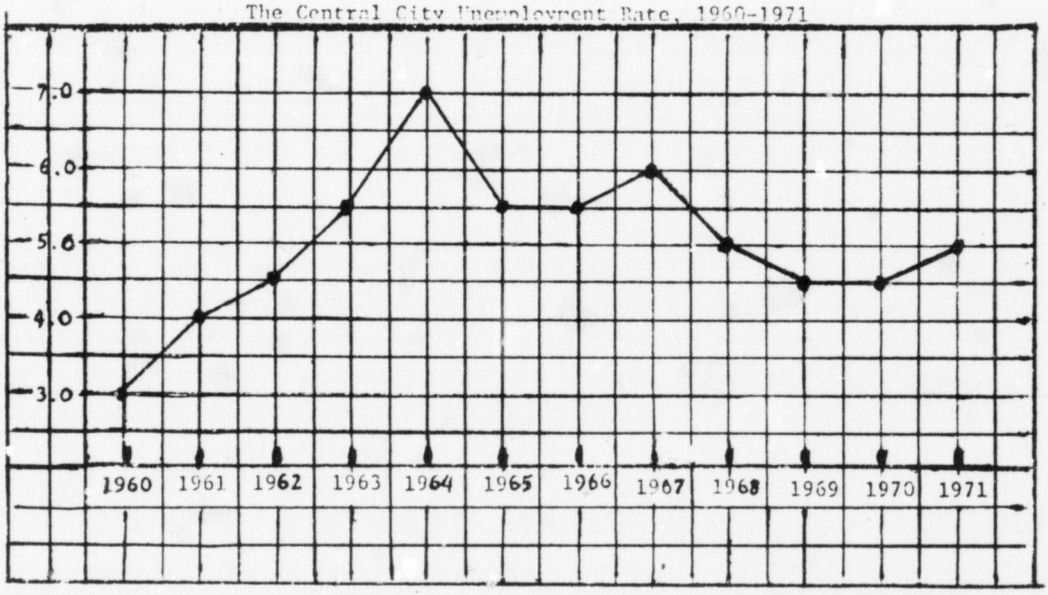
Answer questions 51 through 55 **solely on the basis of the graphs presented below. Note that the unemployment rate for employables who move into Central City is the same as for the City as a whole.**

Employables in Thousands

Employables Who Moved into Central City, 1960-1971



The Central City Unemployment Rate, 1960-1971



51. The ratio of unemployed to employed among the employables who moved to Central City in 1961 was

(A) 1 to 3 (B) 1 to 12 (C) 1 to 24 (D) 1 to 36.

52. In 1972, if the number of employables entering the city increases to 33,000 and the unemployment rate is half the rate of 1971, the number of unemployed among the employables who move to Central City in 1972 will be

(A) 825 (B) 1,650 (C) 8,250 (D) 16,500.

53. Of the following, the year with the greatest number of unemployed among employables who moved to Central City was

(A) 1964 (B) 1965 (C) 1967 (D) 1971.

54. Of the following, the period during which the greatest change occurred in the number of unemployed among employables who moved to Central City was

(A) 1961 and 1962 (B) 1963 and 1964 (C) 1969 and 1970 (D) 1970 and 1971.

55. If there are 640 unemployed among the 23,470 people who move to Central City in 1975, the Central City unemployment rate in 1975 will be most nearly

(A) 2% (B) 3% (C) 4% (D) 5%.

C-P-M/SUP

56. The Chairman of the City's Commission on Human Rights has stated that the purpose of the ethnic survey of City employees conducted recently was to determine

(A) the degree of "ethnic group identity" among City employees belonging to various minority groups
(B) whether there has been job discrimination by City agencies against minority groups
(C) the basis for the establishment of quotas which would guarantee jobs to a certain number of minority group members
(D) a method of strengthening the merit system through establishment of discretionary hiring practices for minority group members.

57. Of the following, an important purpose of the separation of the functions of income maintenance and social services in the Department of Social Services is to

(A) give caseworkers more time to provide services and counselling to welfare families and individuals
(B) eliminate investigation of all families and individuals applying for public assistance
(C) enable the Department of Social Services to implement the State-mandated program of check pickup at the New York State Employment Service
(D) facilitate decentralization of the allocation of funds for services.

58. Changes in the Food Stamp Program made by new regulations passed this spring resulted in

(A) raising both the maximum income for non-public assistance families who would be eligible to purchase stamps and the bonus for families already participating, but also raising the cost of the stamps
(B) lowering both the maximum income for non-public assistance families who would be eligible to purchase stamps and the bonus for families already participating, but lowering the cost of the stamps
(C) raising the maximum income for non-public assistance families who would be eligible to purchase stamps and lowering the cost of the stamps, but lowering the bonus for families already participating
(D) lowering the maximum income for non-public assistance families who would be eligible to purchase stamps and raising the cost of the stamps, but also raising the bonus for families already participating.

59. The Federal Revenue Act of 1971 includes special benefits for working mothers who have child-care expenses in that it provides for deduction of

(A) specific household and child-care expenses for single, divorced or widowed parents only
(B) specific household and child-care expenses for dependents under 15
(C) carfare and other expenses relevant to the mother's employment
(D) allowance for an additional dependent for the person caring for the child.

60. A serious objection raised by those who consider the proposal for revenue sharing by the Federal government to be a major threat to welfare reform is that

(A) states and localities would not have sufficient control over how the money is spent
(B) increased state and local control over expenditures has consistently worked against disadvantaged and minority groups
(C) there are no Federal provisions for enforcement of compliance with regard to discrimination for reason of race, color or national origin
(D) the state governors would not be able to set their own priorities or monitor violations by local officials.

C-P-M/SUP

61. According to the Department of Social Services, of the following, the smallest number of recipients of public assistance consists of

(A) children under 21
(B) aged adults
(C) employables
(D) adults caring for others.

62. Responsibility for quality control studies of public assistance clients' eligibility in New York City by means of interviews and analysis of case records is being taken over by the

(A) U.S. Department of Health, Education and Welfare
(B) New York State Department of Social Services
(C) New York City Department of Investigation
(D) Bureau of Income Maintenance of the Human Resources Administration.

63. The one of the following which is not a current method being used by the Human Resources Administration in its efforts to reduce welfare costs is

(A) improvement of managerial capability
(B) simplification of procedures
(C) insistence on greater accountability
(D) full investigation of all applicants for assistance.

64. The one of the following which would be most likely to reduce the tendency of the unemployed poor to migrate to urban centers is

(A) increased federal subsidies to the small farmer
(B) unionization of migrant farm workers
(C) a national guaranteed income maintenance program
(D) an increase in the national minimum wage.

65. According to the most recent U.S. Census Bureau Report, economic and educational gains made between 1960 and 1970 by Puerto Ricans living in New York City, as compared with the Blacks, were

(A) considerably greater
(B) considerably smaller
(C) about the same
(D) slightly greater.

66. Of the following, modern child-care experts would consider the least desirable setting for treatment of most juvenile offenders while under professional supervision to be

(A) the family's home
(B) a group residence
(C) a foster home
(D) a large institution.

67. New York State has instituted a program of "work relief," which requires all Home Relief recipients who are eligible to work, but cannot find jobs, to "work off" their welfare checks on non-salaried work projects. This approach has met with considerable opposition, mainly because those who oppose it believe that the recipients

(A) may take away jobs which were formerly performed by paid employees
(B) are unskilled and therefore qualified for an extremely limited number of work assignments
(C) are likely to be resentful and inefficient in carrying out their assignments
(D) will receive no improvement in financial status and no assurance of stable employment, so that they can be removed from the welfare rolls

68. A significant aspect of an amendment to the Social Security Act which became effective July 1, 1972 is that it introduces into the Act a program of

(A) public service jobs
(B) income maintenance
(C) medical assistance to the aged
(D) aid to dependent children.

69. During the past few years, the U.S. Supreme Court has made a series of key rulings that directly affect welfare clients. None of these rulings has been concerned with

(A) fair hearings
(B) state residence requirements
(C) home inspections
(D) the family assistance plan.

70. A demonstration program for public assistance recipients in New York City recently approved by the U.S. Department of Health, Education, and Welfare which has been the subject of considerable controversy is the

(A) Incentives for Independence Program
(B) Haitian Training Project
(C) Work Incentive Program
(D) Demonstration Work Project.

GO ON TO THE NEXT PAGE

71. A two-year work study program to educate low-income New York City adults for new careers in community service is provided by the

(A) College for Work Study
(B) College for Human Services
(C) SEEK Program
(D) Manpower and Career Development Agency.

72. Guidance and assistance in social readjustment for youths between the ages of 16 and 21 who have been brought into contact with the criminal courts is provided by the

(A) Youth Consultation Service
(B) Youth Counsel Bureau
(C) Youth Services Agency
(D) Spofford Juvenile Center.

73. Adult parolees, probationers and former prisoners should be referred to the following agency for help in securing employment, counselling and such other assistance as they may require:

(A) The Osborne Association
(B) Central [illegible] Rehabilitation Council
(C) American [illegible] Federation
(D) Federal [illegible] Employment and Guidance Service.

74. The agency called Massive Economic Neighborhood Development (MEND) is based in the following anti poverty area:

(A) East Harlem (B) Brownsville (C) South Bronx (D) Arverne.

75. The agency called Mobilization for Youth is based in the following anti-poverty area:

(A) Lower [illegible]
(B) Williamsburg
(C) East Bronx
(D) Bedford-Stuyvesant.

76. Of the following, the only program to which narcotics addicts may be committed involuntarily is sponsored by the

(A) Addiction Services Agency
(B) Health Services Agency
(C) Mayor's Narcotics Control Council
(D) Narcotics Addiction Control Commission.

77. The one of the following which is a part of the Human Resources Administration is the

(A) Agency for Child Development
(B) Commission on Human Rights
(C) Department of Mental Health and Mental Retardation Services
(D) Office of the Chief Medical Examiner.

78. All of the following departments or agencies are included in the Human Resources Administration except the

(A) Addiction Services Agency
(B) Department of Consumer Affairs
(C) Department of Social Services
(D) Youth Services Agency.

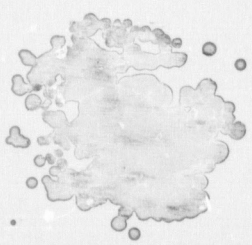
C/SUP

79. The voluntary city-wide central resource for public and voluntary social and health organizations which fosters joint planning and consumer participation in the delivery of health and welfare services and develops social policy is the

(A) Community Service Society of New York
(B) Coalition for Health and Welfare
(C) Social Service Exchange
(D) Community Council of Greater New York.

80. Which one of the following programs would give assistance to a minority group member who is having difficulty in renting an apartment in a community that is regarded as restricted?

(A) Model Cities
(B) Open Cities
(C) New Towns
(D) Urban Renewal.



C/SUP

81. It is generally considered advisable for an employee who has a grievance or is dissatisfied with some condition at work to first

(A) try to transfer to a job with more favorable conditions
(B) express his complaints fully and freely to his supervisor
(C) submit his complaint in writing to higher managerial personnel
(D) take advantage of the organization's formal grievance procedure.

82. Most of the jobs subsidized by the federal government under the Emergency Employment Act have gone to

(A) working mothers
(B) veterans and heads of low-income households
(C) low-income college graduates
(D) workers with clerical skills.

83. The largest number of jobs available in New York City is in the category of

(A) sales
(B) manufacturing
(C) office work
(D) service.

84. The function of the Work Incentive Program (WIN) is to provide work experience and skills training for

(A) high-school dropouts
(B) veterans
(C) handicapped men and women
(D) heads of families on welfare.

85. Of the following, the most important function of employment testing is to

(A) determine what salary to pay the applicant
(B) indicate how applicants react in pressure situations
(C) provide information about an applicant's aptitudes and abilities
(D) determine when an employee will be ready for advancement.

86. The Emergency Employment Act of 1971 was designed to [illegible] in government for persons in the following categories:

(A) "hard-core" male unemployed between the ages of 17 and 22
(B) ex-addicts and former criminal offenders
(C) employable female heads of households who are receiving Aid to Dependent Children
(D) veterans, heads of households, and others who are unemployed or underemployed.

87. Of the following, the most serious concern of administrators of job training programs for the unemployed and unskilled is the

(A) lack of jobs for graduates of the programs
(B) difficulty of recruiting participants
(C) over-emphasis on "third sector" employment programs
(D) scarcity of qualified teachers.

88. Job restructuring can best be described as a method of improving utilization of manpower by

(A) analyzing the tasks performed in a particular job and rearranging them in order to assign simpler tasks to inexperienced workers and give experienced personnel more time for higher-level work
(B) helping employers to identify their manpower needs and to plan training programs for the disadvantaged in order to meet those needs
(C) opening jobs that were formerly unavailable to certain groups because of discriminatory barriers or statutory prohibitions
(D) matching information about an applicant's background, by means of electronic data processing, with a suitable job opening or training program.

89. The function of the manpower program called RENTAR is to

(A) provide placement services for Spanish-speaking people
(B) give courses in restaurant work and management
(C) provide skills training for entry-level jobs in the distributive trades
(D) train enrollees to operate light and heavy trucks and tractor-trailers.

90. During the past few years, the U.S. Department of Labor has sponsored a nationwide program to improve the techniques used to match workers with available job openings. One system sponsored by the Department of Labor, which is a computerized listing of available employment opportunities in major metropolitan areas, is called

(A) a job referral file
(B) a job bank
(C) an occupational guide
(D) an employment dictionary.

ANSWER SHEET COLLECTION: You are required to hand in your question booklet, answer sheet, and all scratch paper after completing the test. Any candidate leaving the room with the question booklet or scratch paper in his possession will be disqualified. When you have completed the test, remain seated and summon the monitor. The monitor will pick up your answer sheet, question booklet, and scratch paper. Leave the building quickly and quietly. You should make a note of your application number and include this number in any future correspondence with the Department of Personnel with respect to this examination.

The Department of Personnel, in establishing the key answers to this test, reserves the right to determine which of the answers listed for each question is to be deemed and accredited as acceptable. The Department of Personnel further reserves the right to cancel and annul any question whenever, upon inquiry, it deems that none of the listed answers thereto can properly be considered acceptable.

KEY ANSWERS: The rating key for this test will be posted on the Official Notices Bulletin Board of the Application Section of the Department of Personnel, 49 Thomas Street, New York, N.Y. 10013, for a period of three days beginning October 25, 1972.

Please do not telephone the Department of Personnel requesting information as to the progress of the rating of this examination. Such information will not be available to candidates. All candidates in this examination will be notified individually by mail of the rating they receive when the rating of all candidates in the examination has been completed. Notify this Department promptly in writing of any change in your address to insure prompt delivery of such notice.

195ael

Defendants' Exhibit F

[INTERDEPARTMENTAL MEMORANDUM DATED FEBRUARY 4, 1972]

THE CITY OF NEW YORK

Interdepartmental Memorandum

To: Acting Chief, Examining Division S

Date: February 4, 1972

From: Leonard Y. Rosenberg, Senior Personnel Examiner

Subject: Field Audit Report - Promotion to Supervising Human Resources Specialist, Exam. No. 1631.

During the period October 1-7, 1971 various work locations of the Human Resources Administration and its constituent agencies were visited and observed as follows:

Human Resources Administration (H.R.A.) - Office Services Division
Payroll Division
Personnel Division
Purchasing Division

Agency for Child Development (A.C.D.) - Head Start

Community Development Agency (C.D.A.) - Budget Review Office
Field Bureau - Divisions I & II
Program Planning Division
Publications Division

Manpower or Career Development Agency (M.C.D.A.) - Central Information Control Division
Office of 1st Deputy Commissioner for Operations
Office of the On-the-Job Training Coordinator
Program Planning Division

Supervising Human Resources Specialists interviewed and observed:
Louis Bello, Supervising Human Resources Specialist (Manpower Development and Training); Ruth Kibuoli, Supervising Human Resources Specialist; [illegible] Ripin, Supervising Human Resources Specialist (Community Programs), and [illegible] Williams, Supervising Human Resources Specialist (Management).

Persons interviewed to confirm, clarify, augment and provide additional information were:
Howard Matelli, Assistant Director of Personnel; Dorothy Stone, Principal Human Resources Specialist, Assistant Director of Bureau of Job Development, M.C.D.A.; Javier Antompietri, Principal Human Resources Specialist, Director of Budget Review, C.D.A.; and Fred Mussendon, Principal Human Resources Specialist (Community Programs) District Officer, Field Division II, C.D.A.

Examples of Typical Tasks: (Each task is followed by a designation which corresponds with an area of the test plan herewith submitted.)

Tasks Observed:
Supervision of staff (V). Solve problems of staff (V). Conduct staff meeting for control and safety purposes (V, VI).

EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.
JAN 1974

Tasks Learned About Through Interviews:

Negotiation for funds to permit on-the-job development of disadvantaged residents of poverty areas of N.Y.C. (I, II, III, IV, VII, VIII). Maintains relationships with federal and state agencies involved in anti-poverty activities in the field of development of people (I, II, III, IV, VII). Obtain additional employers who will accept Trainees (I, II, III, IV, VII). Serve as consultant to Neighborhood Manpower Service Centers (N.M.S.C.) (I, II, III, IV, VI, VII, VIII). Write, direct and produce radio and television shows for broadcast on municipal, educational and commercial stations in N.Y.C. e.g. Community School Board functions; economic development in disadvantaged areas of N.Y.C.; consumer education. (I, II, III, IV, VII). Prepare newsletters and press releases for the above (I, II, III, IV, VI, VII). Provides technical assistance to delegate agencies (I, II, III, IV, VI, VII, VIII). Reviews activities to determine if delegate agencies are achieving their goals (I, II, III, IV, VI, VII, VIII). Assists community corporations and delegate agencies in dealings with other agencies to achieve goals as originally established and approved by the Federal Office of Economic Opportunity for each program year (I, II, III, IV, VI, VII, VIII). Encourages Community Corporations to develop expertise so that they can become autonomous of C.D.A. supervision (I, II, III, IV, VI, VII, VIII).

Advise agency executives re office services.- layout, telephone, equipment, etc. based on knowledge of duties and responsibilities in the line and staff segments of HRA and its constituent agencies (I, II, III, IV, VI, VII, VIII). [illegible] closely at sites with officials, construction people, architects, engineers, community representatives and real estate experts to be certain that future needs will be included in the plans (I, II, III, IV, VI, VII, VIII). Set up contracts and systems to ensure compliance therewith re printing, cleaning, supplies, equipment, reproduction, rental, etc. (I, IV, VI, VII, VIII). Survey new equipment and recommend rental, purchase etc. (I, IV, VI, VII, VIII). Prepare budget for Office Services Division (I, IV, VI, VIII).

Knowledge and Skills Required: (There is a Roman Numeral following each factor which corresponds to an area of the Test Plan).

1. Responsibilities of H.R.A. Central and its constituent agencies and relevant outside agencies. (I)
2. Familiarity with developments and problems in programs affecting human resources and the amelioration or elimination of poverty. (II)
3. Knowledge of community and public relations. (III)
4. Skills in deciding problems relative to such on-the-job situations as office services, payroll, budget and personnel. (IV)
5. Ability to supervise, direct and develop staff. (V)
6. Familiarity with machine, equipment and supply purchase, usage and management including safety. (VI)
7. Skill in language usage including vocabulary and reading comprehension. (VII)
8. Ability to perform arithmetic computations and interpret tables, graphs and charts. (VIII)

Duties and Responsibilities
The statement in the notice of examination is correct and was confirmed by Mr. Howard Mateli, Assistant Director of Personnel of the Human Resources Administration.

There are no special medical/physical requirements for this position.

The Human Resources Administration wishes an opportunity to review the notice of examination before publication.

Leonard J. Rosenberg

Leonard J. Rosenberg
Sr. Personnel Examiner

Approved by:

Sol Buchman

Sol Buchman, Acting Chief
Examining Division S

195af1

Defendants' Exhibit G-1

[TEST PLAN EXAMINATION NUMBER 1631]

TEST PLAN

Date February 4, 1972

Exam. No. 1631 Exam. title Promotion to Supervising Human Resources Specialist

No. of candidates (estimated or actual) 175 Type of Test Plan: Multiple-Choice Date of Test June 3, 1972

Has a test plan been previously approved? ☐ Yes ☒ No Date of Previous Exam. None Previous title, if different

Note: If this test plan is different from the previous one, indicate what the differences are and the reasons therefor.

	AREAS TO BE COVERED	RELATIVE EMPHASIS
I.	Functions of N.R.A. its constituent agencies and other relevant public and private agencies.	15%
II.	Current Developments and problems in the field of human services.	10%
III.	Community relations and organization.	10%
IV.	Judgment on on-the-job situations involving office services, payroll, budget and personnel.	20%
V.	Techniques of staff development, supervision and guidance.	20%
VI.	Machine, equipment and supply purchase, usage and management including safety.	5%
VII.	Language usage including vocabulary and reading comprehension.	10%
VIII.	Arithmetic computations and interpretation of tables, charts, and graphs.	10%
		100%

There will be a total of 100 multiple-choice questions, a portion of which will be in common with:

(1) Senior Human Resources Specialist, Exam. No. 1009.

(2) Promotion to Senior Human Resources Specialist, Exam. No. 1626.

EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.
JAN 1974

Prepared by Leonard Y. Rosenberg Approved by Unit or Division Chief Sol Bachman

Approved by or for Director of Examinations Date

OP-502

Defendants' Exhibit G-2

[TEST PLAN EXAMINATION NUMBER 2013]

TEST PLAN

Date 3/5/73

Exam. No. 2013 Exam. Title Supervising Human Resources Specialist

Number of Competitors 175 Type of Test Weighted Rating Date of Test

Has a test plan been prepared previously? [ ] Yes [X] No Date of Previous Test 9/69 Previous Title, If Different

Note: If this test plan is different from the previous one, indicate what the differences are on the reverse side.

AREAS TO BE COVERED	RELATIVE EMPHASIS ASSIGNED
I. Functions of relevant public and private agencies.	5%
II. Current developments and problems in the field of human services	
III. Community relations and organization	10%
IV. Judgment in on-the-job situations involving office services, payroll, budget and personnel.	20%
V. Techniques of staff development, supervision and guidance.	20%
VI. Machine, equipment and supply purchase, usage and management, including safety.	5%
VII. Language usage, including vocabulary and reading comprehension.	10%
VIII. Arithmetic computations and interpretation of tables, charts, and graphs.	10%
	100%

There will be a total of 100 multiple-choice questions, a portion of which will be in common with:

(1) Senior Human Resources Specialist, Exam. No. 1099

(2) Promotion to Senior Human Resources Specialist, Exam. No. 1626.

(3) Senior Human Resources Specialist (M&T), Exam. No. 1094.

(4) Promotion to Supervising Human Resources Specialist, Exam. No. 1631.

(5) Supervising Human Resources Specialist (M&T), Exam. No. 2012

EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.
JAN 1974
G-2 ltf

Prepared by Larry Fichbein Approved by Unit or Division Chief Phillip Siegal

Approved by or for Director of Examinations _____ Date _____

DE 502

5-68

Letter of Edward O. Howard Dated April 9, 1974

COVINGTON, HOWARD, HAGOOD & HOLLAND
ATTORNEYS AT LAW
15 COLUMBUS CIRCLE, NEW YORK, N. Y. 10023

G. DONALD COVINGTON
EDWARD O. HOWARD
KENNETH D. HAGOOD
ALBERT HOLLAND

TELEPHONE 3340
CABLE COVINGTOND, NEW YORK

JAMES R. RHONE
COUNSEL

April 9, 1974

Paula Omansky, Esq.
Law Department
Municipal Building
New York, New York 10007

Re: Williams v. HRA

Dear Paula:

We are setting forth herein information with respect to the plaintiffs in the above captioned action:

JOHN GOYCO:

1. Is with the Department of Employment within HRA.

2. His "in house" title is Acting Senior Case Manager (Public Service Career Program Acting Coordinator).

3. As Acting Senior Case Manager Goyco:

a. Is directly responsible for program implementation.

b. Monitors the Educational Component and on-the-job training.

c. Evaluates the program components, education and on-the-job training.

d. Maintains files and records for the program.

e. Submits weekly reports to the Regional Manager and to the Public Service Career Program in the Central Office.

4. Mr. Goyco has not taken any prior examination for an HRA position.

JOHNNIE McCOY:

1. Is with the Department of Employment within HRA.

2. Her "in house" title is Assistant Coordinator of Supplies and Equipment.

3. Her present job duties are as follows:

a. Under the supervision of the coordinator, she prepares all purchase orders and makes proper distribution of same.

b. Handles all receipt slips for materials delivered.

c. Serves in the capacity of trouble shooter and expediting officer pertaining to any problem in procurement.

d. Handles G.S.A. Selfservice store procurement for control office and delegate agencies exclusively.

e. Processes all invoices and G.S.A. billings for payment.

f. Prepares all G.S.A. multi-use requisitions for Central Office as well as the delegate agencies (used for obtaining merchandise from G.S.A. New Jersey warehouses).

g. Establishes schedule for field trips to delegate agencies for proper utilization of government equipment and supplies.

h. Regulates the messenger service.

i. Serves as coordinator of supplies and equipment in the absence of coordinator.

4. Ms. McCoy has not taken any previous examinations for HRA positions.

DOROTHY WILLIAMS:

1. Is with the Agency of Child Development.

2. Her "in house" title is Field Services Specialist.

3. Under the direct supervision of the Field Services Supervisor, the Field Services Specialist is the direct liason between delegate agency staff and parents and central services. The Field Services Specialist is responsible for providing technical assistance, training and support necessary for on-going quality programs. Her specific responsibilities include:

a. Developing schedule so that each center is visited on a regular basis.

b. Determining how an agency is fulfilling terms of its contract with CDA, utilizing questionnaires developed by program specialists.

c. Evaluating specific program areas with special materials developed by program specialists.

d. Submitting to the Field Services Supervisor prepared weekly reports of visits to assigned centers and special reports on re-requests including needs identified after effective dialogue with staff and parents.

e. Clarifying and interpreting all city-wide Head Start policies to insure awareness and compliance; clarifying and interpreting all national guidelines to insure parent participation in all parts of the program.

f. After consultation with city-wide area representatives and the Parent Involvement Coordinator, conducting orientation for staff and parents on PAC authorities and responsibilities.

g. Monitoring PAC elections.

h. Assisting parents and delegate agency staff in developing positive relationships and effective PAC's at all levels.

i. Assisting local directors in mobilizing PAC's.

4. Ms. Williams has taken one prior examination for HRA, as if more fully detailed in her affidavit dated the 28th day of December, 1973.

We note the suggested dates set forth in your letter of April 5, 1974 with respect to filing of Defendants' Consolidated Brief (April 29) and Plaintiffs' right to file a reply brief (May 6), and we agree to same.

We trust that the information set forth above with respect to the Williams' plaintiffs suffices for your needs in preparing

Letter of Edward O. Howard Dated April 9, 1974

COVINGTON, GRANT, HOWARD, HAGOOD & HOLLAND

your brief. If there is anything more which you wish to discuss concerning the matter, would you kindly call me at once.

Sincerely,

EDWARD O. HOWARD

EOH:aw

cc: Hon. Morris E. Lasker
Jeffrey Mintz, Esq.
James Jones

Defendants' Stipulated Facts

IN THE
UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

[CAPTION OMITTED]

It is hereby stipulated and agreed among the attorneys for the parties hereto that the following statistical data would be introduced into evidence and that the witnesses, if called, would testify as follows:

HRS (MDT) Open Competitive No. 1095

A total of 182 took the HRS (MDT) open competitive examination. A total of 143 failed. HRA was able to determine the ethnic identity of 27 of those who passed the exam, and 69 of the failures.

HRS (MDT) Open Competitive Examination No. 1095

	Passed	*Failed*	*Total*
Black	12 (21%)	44	56
White	8 (47%)	9	17
Hispanic	7 (30%)	16	23
Sub total	27	69	96
No ethnic info	12	74	86
	39	143	182

Defendants' Stipulated Facts

SR. HRS (MDT) Open Competitive Exam. No. 1094

A total of 193 took SR. HRS (MDT) Open Competitive. A total of 145 failed. HRA was able to determine ethnic identity of 30 of those who passed and 67 of those who failed.

SR. HRS (MDT) Open Competitive Exam

	Passed	*Failed*	*Total*
Black	18 (31%)	41	59
White	5 (33%)	10	15
Hispanic	7 (32%)	15	22
Other	—	1	1
Sub total	30	67	97
No record	18	78	96
	48	145	193

SR. HRS Promotional Exam No. 1626

A total of 106 persons took the SR HRS (Pro). A total of 44 persons passed; 62 persons failed.

SR. HRS Promotion Exam

	Passed	*Failed*	*Total*
Black	11 (18%)	51	62
White	30 (88%)	4	34
Hispanic	3 (37%)	5	8
Other	—	2	2
Total	44	62	106

Defendants' Stipulated Facts

SR. HRS (Open Competitive) No. 1099

A total of 683 persons took the SR. HRS (OC). A total of 255 passed; 428 failed. HRA was able to identify the ethnic origin of 165 of those who passed and the ethnic origin of 241 of those who failed.

SR. HRS Open Competitive Exam No. 1099

	Passed	*Failed*	*Total*
Black	56 (26%)	165	221
White	101 (65%)	54	155
Hispanic	8 (27%)	22	30
Sub total	165	241	406
Ethnic Origin Undetermined	90	187	277
Total	255	428	683

HRS Open Competitive Exam No. 1097

A total of 606 persons took the HRS Open Competitive Examination and 200 persons passed. HRA was able to identify the ethnic origin of 122 of the passers and the ethnic origin of 206 of those who failed.

Defendants' Stipulated Facts

HRS Open Competitive Exam

	Passed	*Failed*	*Total*
Black	55 (31%)	120	175
White	59 (51%)	56	115
Hispanic	7 (19%)	29	36
Other	1	1	2
Sub total	122	206	328
Ethnic Origin Undetermined	78	200	278
Total	200	406	606

HRS Promotional Examination No. 1625

A total of 58 persons took the HRS promotional examination, 14 passed.

HRS Promotional Examination

	Passed	*Failed*	*Total*
Black	13 (27%)	36	49
White	1 (20%)	4	5
Hispanic	—	4	4
	14	44	58

LEONARD ROSENBERG

If called to testify, Leonard S. Rosenberg would testify that he followed the same procedures in performing the job analyses for the positions of Senior HRS (promotional and open competitive) and HRS (promotional and open competitive) as was testified to in the *Jones* case for the

position of Supervising HRS. The results of his job analyses for these positions are set forth in the respective "Field Audit Reports," which are denominated Defendants' Exhibits M-1 and M-2.

HELENE WILLINGHAM

If called to testify, Helene Willingham would testify that she followed the same procedures as testified to in the *Jones* case when preparing the examinations listed below which are herewith introduced as Defendants' Exhibits:

Human Resources Specialist (HRS) Occupational Series

Position	*Exam. No.*	*Exhibit No.*
Senior HRS promotional	1626	N-1
Senior HRS open competitive	1099	N-2
HRS promotional	1097	N-3
HRS open competitive	1625	N-4
Senior HRS (MDT) open competitive	1094	N-2
HRS (MDT) open competitive	1095	N-3

HAROLD YOURMAN

If called to testify, Harold Yourman would testify that the examination for the position of Senior HRS, and for HRS, are job related in that they test for knowledge of areas of employment within the Human Resources Administration to which persons in the titles could be assigned.

Dr. Mildred Katzell, if called, would testify, as follows:

The statements made about the Supervising HRS tests are equally applicable here. Leonard Rosenberg prepared

the job or task analyses which lay the foundation for a valid job-related examination in a thorough and competent manner, consistent with professional standards in the field of employment testing. He gathered data, by interviewing persons presently holding the positions of Senior HRS and HRS, observed persons performing their work and confirmed and clarified his observations by interviewing persons within the Human Resources Administration in superior and supervising positions.

From the particular tasks observed and learned through interviews, he generalized to basic "knowledge and skills required," related each task to the general area of knowledge to be tested. Each area of knowledge was "weighted" in terms of frequency and/or importance, i.e., the test plan.

The resultant products, the job or task analyses themselves, were impressive in their adequacy, thoroughness and completeness and provided more information than Dr. Katzell was accustomed to finding when asked to work on tests based on job analyses.

As for the examinations themselves, the questions related to the test plan; the test plan related to the knowledge and skills required; the knowledge and skills required related to the job audit of tasks observed and learned about through interviews. To this extent, the test is job-related and performance on the test could be expected to relate to performance on the job.

The item analyses showed that the questions were at the appropriate level of difficulty. Persons who did better on individual questions did better on the test as a whole. Further, the item analyses showed that virtually all of the

options were working. While there was one question, which 100% of the high scoring group answered correctly, never did 100% of the low scoring group answer a question correctly. There were very few questions where less than 50% of high scoring group answered correctly. The questions cover a full range of difficulty, which is desirable when it is necessary to rank individuals.

Based on examination of the job analyses, the tests, and, the item analyses, these tests do a better than average job of covering the requisite knowledge and skills identified by the job analyses.

Dr. E. Belvin Williams, if called to testify, would testify as follows:

He would answer the question whether the examinations for Senior HRS and HRS are job-related in the affirmative and with a high degree of confidence.

He interviewed 10 individuals presently occupying the position of Senior HRS or HRS, all of whom took, and some of whom successfully passed, the challenged examinations. Each of the incumbents was interviewed at his or her work site for approximately an hour. Those interviewed were of the opinion that Dr. Williams' purpose in talking with them was to conduct a desk audit of the positions they presently occupied.

Dr. Williams based his opinion on the job-relatedness of the tests by utilizing direct and indirect indicators.

As to the direct indicators, Dr. Williams asked, in the course of the interview, for each of the "knowledges and skills" listed in the job-analyses, whether these were needed or relevant for the successful performance of the individual's duties. He further asked for and was shown mate-

rials, such as reports, proposals, budgetary summaries, telephone logs, and schedules of meetings, which documented and confirmed the oral description given by the respondent in describing the relevance of these knowledges and skills.

On the basis of these "direct" indicators, he concluded that the seven test categories named are substantially related to the performance level of the positions. One converse of his conclusion is that the individual's lack of the knowledge or skill labeled in the test plan would seriously handicap the effective performance of the duties described.

This conclusion is not to be construed to mean that each category identified in the test plans is related to each job or set of functions in the same way or to the same degree. Nor does he claim that each question selected for the test was the best or sole representative of any given category.

Dr. Williams also resorted to indirect indicators in forming his opinion. He recorded information in the following areas.

1) The highest level of education achieved.

2) The number of years worked, either in HRA or another City agency.

3) The ease and skill with which the respondents could make known and understood by him the intricacies of their jobs.

4) The communication skills of the respondent, e.g., precision of expression in describing governmental processes.

On the basis of these indirect indicators, he would assert two similar but quite distinct things:

a) The more educationally qualified and the more work-experienced (in HRA work) individuals are acceding to higher levels of job responsibility.

b) The individuals who have advanced to higher levels of job responsibility tended to pass the test with greater frequency than those who had not achieved such on-the-job success. The job advances preceded the administration of the test.

Dr. Williams' evaluation of the indirect indicators supported his opinion based on the direct indicators that the tests were job-related.

Dr. Williams did not address himself to related inquiries such as the predictive efficiency of the tests, the magnitude of measurement error, and the like. However, the more narrowly stated question of whether the tests were job related can be answered in the affirmative and with a high degree of confidence.

EXHIBIT N-1 ANNEXED TO
DEFENDANTS' STIPULATED FACTS

THE CITY OF NEW YORK
DEPARTMENT OF PERSONNEL

Appl. No. _____

EXAMINATION FOR SENIOR HUMAN RESOURCES SPECIALIST
EXAMINATION NO. 3026

Written Test - Weight 85, 70% Required

October 14, 1972 GENERAL INSTRUCTIONS Time Allowed: 2½ Hours

SIGNALS

First Signal - Question booklets distributed. READ THIS PAGE ONLY.
Second Signal - Open your booklet. Begin work.
Third Signal - End of test. Stop all work. This signal is given 2½ hours after the second signal. If you finish before the third signal, summon the monitor. No extra time is allowed on account of lateness. The time allowed includes time for fingerprinting.

BOOKLETS

This test booklet should consist of 18 consecutively numbered pages. There are 80 questions, all of equal weight. ANSWER ALL QUESTIONS. Examine your booklet after the second signal is given to be sure it is not defective in any way. You are responsible for obtaining a complete booklet.

You may make a record of your answers in the test booklet and you may take the test booklet with you. This is necessary in the event that you wish to protest the proposed key answers. The time allowed includes time for recording your answers and no time may be taken for this purpose after the third signal is given. Further information concerning key answers and protests appears at the end of the test booklet.

If you read these instructions carefully, you will not need to make inquiries. No monitor is authorized to change these instructions or the terms and conditions of this test. You will be DISQUALIFIED if you obtain or attempt to obtain information or help from books or other sources, copy or attempt to copy or read the work of another candidate, permit your work to be copied or read by another candidate, communicate in any way with another candidate, leave your seat without permission of the monitor, sign your name or put any identifying mark on any answer sheet, or disobey an instruction of an examiner. You are prohibited from having on your desk or in your possession during the course of the test any reference materials, notes, or newspapers which you have brought with you.

It is a misdemeanor for anyone to impersonate a candidate or permit himself to be impersonated at an examination.

Smoking is NOT permitted.

LEAVING

During the test you may not leave your seat except when necessary, and then only when accompanied by a monitor. You may withdraw without completing this test and not have your test rated by writing "I withdraw" and your signature on your answer sheet and giving it to the monitor. However, no candidate will be permitted to depart before 10:30 a.m.

DO NOT OPEN THIS BOOKLET UNTIL THE SECOND SIGNAL IS GIVEN

Exhibit N-1 Annexed to Defendants' Stipulated Facts

DIRECTIONS FOR ANSWERING QUESTIONS

Answer all questions on the official Answer Sheet before the third bell has rung. ONLY YOUR ANSWER SHEET WILL BE RATED.

For each question, select that answer which you believe to be the acceptable one among those listed and note the capital letter preceding your selected answer.

Then, on the official answer sheet, find the row numbered the same as the question and record your answer by blackening the space between the dotted lines immediately to the right of the capital letter representing your selected answer, using a No. 2 pencil.

When recording your answer with a No. 2 pencil, fill in the entire space between the dotted lines and the full length of the lines by pressing firmly on the pencil and using several strokes.

IF YOU WISH TO CHANGE AN ANSWER, ERASE THE OLD ANSWER COMPLETELY. Do not cross it out. Then record your new answer in the proper space.

Do not make any marks except your answer. More than one answer to a question or improperly erased answers or stray marks caused by resting the pencil on the paper may be counted as wrong answers.

Use pen (blue or black ink) for filling in the headings on your answer sheet but use only the No. 2 pencil for recording your answers.

Do not fold the answer sheet or damage the edges because the rating is done by machine.

Since there are only 4 answers listed for each question, the spaces to the right of the letter E on the answer sheet are not used for this examination.

To help you understand the procedure, the following sample item is given:

SAMPLE 0: The sum of 5 and 3 is

(A) 2 (B) 8 (C) 9 (D) 11.

The sum of 5 and 3 is 8, so that the acceptable answer is shown thus on your answer sheet:

SAMPLE 0: A ===== B ===== C ===== D =====

CONTINUE ON

FOLLOWING

PAGE

Exhibit N-1 Annexed to Defendants' Stipulated Facts

EXAMINATION NO. 1625

PROMOTION TO SENIOR HUMAN RESOURCES SPECIALIST

Final Key Answers for Written Test
Held October 14, 1972

The following are the final key answers as adopted by the Commission at a meeting held on _____. These key answers result from careful consideration of all protests submitted by candidates.

1. A	21. A	41. C	61. B
2. A	22. C	42. A	62. D
3. A	23. C	43. D	63. B
4. C	24. D	44. A	64. A
5. D	25. B	45. D	65. B
6. A	26. C	46. C	66. D
7. B	27. A	47. D	67. B
8. A	28. A	48. B	68. B
9. D	29. D	49. C	69. C
10. A	30. B	50. C	70. A
11. A	31. A	51. B	71. C
12. A	32. C	52. C	72. D
13. A	33. B	53. A	73. B
14. A	34. A	54. B	74. B
15. A	35. A	55. D	75. A
16. A	36. D	56. D	76. B
17. B	37. D	57. B	77. A
18. B	38. B	58. A	78. D
19. A	39. C	59. C	79. B
20. A	40. B	60. A	80. A.

Exhibit N-1 Annexed to Defendants' Stipulated Facts

1. Of the following, the best time for a supervisor to give advice about a job-related problem which a subordinate has brought up during an interview is usually after the

   (A) subordinate has told him all the facts
   (B) supervisor has determined the employee's unconscious motives for bringing up the problem
   (C) employee has submitted a written report on the problem
   (D) supervisor has discussed the problem with his superior.

2. Of the following, the situation in which a supervisor would have to make the greatest effort in order to communicate effectively with his subordinates would occur when

   (A) there is a large gap between the supervisor's background and experience and that of his subordinates
   (B) the subordinates have already learned about the information through informal channels
   (C) the subordinates have completed their education much more recently than the supervisor
   (D) the supervisor has been with the organization for a much shorter time than most of his subord

3. Of the following, the factor which would be most critical in influencing whether subordinates accept or resent a supervisor's authority is the

   (A) manner in which the supervisor uses his authority
   (B) frequency with which the supervisor ignores minor violations of rules
   (C) degree of delegation to subordinates by the supervisor
   (D) cultural attitudes of individual subordinates toward authority.

4. In which one of the following situations would employees be most likely to accept temporarily difficult working conditions without excessive complaining?

   (A) The organization has a strict policy of disciplinary action against uncooperative employees.
   (B) Employees do not have the right to take part in "job actions" or strikes.
   (C) An atmosphere of mutual trust and good human relations exists between subordinates and managerial personnel.
   (D) Relationships between subordinates and managerial personnel are strictly businesslike.

5. Assume that an agency has been reorganized into integrated work teams. Instead of assigning employees performing the same task to a single unit, such as a typing pool, those performing different but interdependent parts of an activity are put into the same work group. Of the following, the most probable result of such a reorganization would be to

   (A) permit more efficient work scheduling
   (B) achieve greater economy
   (C) decrease training costs
   (D) improve employee job satisfaction.

6. The need for identification with a work group has been found to be one of the most powerful on-the-job motivations. Of the following, the employee who is least likely to have a strong attachment to his work group is one who

   (A) is at the very bottom of the organization's promotional ladder
   (B) belongs to a small department
   (C) works with others of similar background and interests
   (D) has worked for the organization for a considerable period of time.

7. According to many management experts, the one of the following situations which would be the most significant indication that employees of an organization are dissatisfied with their supervisors and feel that they are being treated unfairly is one in which

(A) employees submit a large number of work-related suggestions
(B) many employees are unproductive and seem to be continually loafing on the job
(C) union membership has recently increased
(D) turnover is low in spite of a comparatively good labor market.

8. A supervisor who has informal, friendly relationships with his subordinates is conducting himself

(A) appropriately; good informal relationships set the stage for better communication between the supervisor and subordinates on work-related problems
(B) inappropriately; subordinates who have informal relationships with their supervisor are not likely to accept his authority
(C) appropriately; friendly relationships between the supervisor and his subordinates will create a true feeling of equality between them
(D) inappropriately; subordinates are likely to become suspicious of insincerity and fearful of being manipulated.

9. Specialization is a commonly-used method of increasing productivity and efficiency in a large organization. Task specialization means that separate and comparatively simple parts of a more complex job are performed by different employees. Of the following, this type of specialization probably would not

(A) reduce training costs
(B) permit the use of more specialized equipment
(C) simplify the development of job controls
(D) give most employees a greater sense of accomplishment.

10 Some management experts who have studied informal communication patterns in large organizations believe that the office grapevine is an effective means of communication. Of the following, an important function performed by the grapevine is to

(A) permit feedback and spread information faster than most formal communication systems
(B) give employees important information from reliable sources
(C) permit management to identify rumor-mongers and troublemakers
(D) bring informal leaders to the attention of management.

11. Recent studies of morale and productivity tend to show that

(A) the correlation between morale and productivity is rather low
(B) high morale is associated with high productivity
(C) low morale is associated with high productivity
(D) low morale is associated with low productivity.

12. Research studies have indicated that teamwork among employees is most likely to result in higher productivity in a situation where

(A) employees accept as legitimate management's demands for higher productivity
(B) management strongly encourages the workers' competitive spirit
(C) employees are unified for the purpose of protecting themselves against management's demands
(D) management does not encourage employees to make independent decisions.

13. The relationship between boredom on the job and fatigue is correctly stated as follows:

(A) Boredom usually results in increased fatigue.
(B) A worker usually becomes bored when he expends a minimum of physical energy.
(C) Fatigue usually results in boredom.
(D) A worker who is bored does not usually become fatigued.

14. The "halo effect" can properly be suspected of harming supervisor-subordinate relationships when the supervisor

(A) does not discriminate between the good and poor work of an employee considered by him to be generally superior
(B) expects his subordinates to treat him in an impersonal and formal manner
(C) hesitates to discipline employees because of an extreme need for them to like him
(D) is unable to gain his employees' confidence because he cannot shed his reputation for being hardboiled and unfair.

15. It is generally considered that the best interview is the one in which the interviewer talks less than the person interviewed. The one of the following which is an effective device to encourage the other person to talk during the interview is for the interviewer to

(A) summarize the feelings the person has expressed, omitting details and incidentals
(B) keep silent and show no indication of his reaction to what the person is saying
(C) clearly show his approval or disapproval of what the person is saying
(D) talk to the person in terms of concepts rather than specifics.

16. Studies of groups of workers doing the same job under the same conditions have shown that there are always a few workers who have more accidents than the rest. The one of the following which is <u>least</u> likely to be a finding of such studies is that those who have the most accidents probably are

(A) middle-aged
(B) poorly adjusted to work
(C) inexperienced at the job
(D) less efficient than other workers.

17. Work measurement has been defined as "the determination of the proper amount of time and effort required for the effective performance of a specific task." Of the following, the factor which would be <u>least</u> relevant in studying an operation by means of work measurement is whether the operation is

(A) repetitive with constant standards of quality
(B) compensated for at a prevailing rate of pay
(C) routine in nature and relatively easy to perform
(D) performed in large volume.

18. Of the following, "participative management" can be defined best as a method in which

(A) subordinates have formed groups for the purpose of gaining participation in the decisions of management
(B) management makes a practice of encouraging subordinates as a group to discuss and participate in decisions on a wide variety of work-related problems
(C) managerial employees are given varied assignments on a rotating basis
(D) management gives all employees the opportunity to participate in major policy decisions.

19. [illegible] by
[illegible]. This approach
to [illegible]

(A) [illegible] job
(B) [illegible]
(C) [illegible]
(D) [illegible]

20. If a supervisor should find that he must issue an order but his subordinates will probably resist, it is advisable for the supervisor to first

(A) discuss the order with his subordinates and give them an opportunity to ask questions and make objections
(B) issue the order without comment and discourage discussion and objections by his subordinates
(C) inform his subordinates that he does not agree with the order he is going to give them, but must carry out the decisions of higher authority
(D) inform his subordinates that he will take disciplinary action against those who resist carrying out the order he will present to them.

21. When a supervisor finds that his subordinates differ considerably in the amount of attention and guidance they require of him, it would be most advisable for the supervisor to

(A) adjust his supervisory practices according to individual needs
(B) give an equal amount of attention and guidance to each subordinate in order to be fair
(C) give less responsibility to subordinates who seek reassurance
(D) permit employees who prefer independence to work strictly on their own.

22. Connecting lines on an organization chart represent lines of

(A) management quality controls
(B) work flow
(C) authority and responsibility
(D) fiscal accountability.

23. "General supervision" has been defined as a method in which the supervisor makes assignments in broad, general terms and gives considerable autonomy to subordinates, in accordance with their knowledge and abilities. A supervisor who uses this method is least likely to

(A) do different work from that of subordinates
(B) concentrate on long-range problems
(C) exert excessive pressure on subordinates
(D) devote considerable effort to training subordinates.

24. Of the following, the most important reason why a supervisor should be cautious about giving subordinates advice about personal problems is that the

(A) subordinate may blame him if the advice turns out to be misleading
(B) supervisor should not discuss personal problems with subordinates on office time
(C) subordinate may lose confidence in his ability to perform on the job
(D) supervisor may not know enough to give helpful advice.

25. Professional or technical consultants may be used most appropriately by a human services agency to

(A) direct staff conferences centered around programs
(B) give advice regarding the quality of service or the effectiveness of plans
(C) supervise implementation of programs they have developed
(D) direct the in-service trai

Exhibit N-1 Annexed to Defendants' Stipulated Facts

26. Of the following, the most important aim of community involvement is to assist a disadvantaged community to

(A) accomplish particular tasks within the service system
(B) evaluate its achievements in the light of pre-stated goals
(C) prepare itself to function as an organized, effective entity
(D) collect information about the network of social services.

27. The goal of the current reorganization of the New York City Human Resources Administration is to provide services in the neighborhoods whenever feasible, in accordance with the needs of neighborhood residents. Of the following, a desirable result of this would be

(A) variation in the combination of services offered in each neighborhood
(B) uniformity of services offered in each neighborhood
(C) considerable variation in the amount of community participation in each neighborhood
(D) decrease in the need for utilization of existing community facilities.

28. Appropriate division of functions and responsibilities between the communities and central headquarters is vital to the successful administration of a decentralized human services agency in a large urban center. The one of the following which is not an appropriate function to be performed at the community level is

(A) review of district plans for policy compliance
(B) stimulation of maximum use of both new and existing resources
(C) review of service program goals and relationships
(D) operation of community service teams.

29. A new approach to the delivery of services currently being developed by the New York City Department of Social Services is the Community Social Services Program. The one of the following which is not a major feature of this program is

(A) stationing of personnel in locations that are easily accessible to clients
(B) decentralization of authority to make decisions regarding services
(C) use of purchased services from private organizations to complement directly-delivered services
(D) preparation of a single annual Human Services Plan applicable to all Human Resources Districts.

30. The Community Social Services Program of the Department of Social Services is being implemented initially in the following Human Resources Districts:

(A) The Lower East Side, Bushwick and Parkchester
(B) East New York, Washington Heights, and the Lower East Side
(C) Washington Heights, the Lower East Side, and Bedford-Stuyvesant
(D) South Jamaica, Central Harlem and Williamsburg.

31. Community participation is a key feature of the Community Social Services Program of the Department of Social Services. Of the following, a correct statement with regard to the community participation facet of the program is that it

(A) extends to the District level the consumer involvement aspect which was previously embodied in the client advisory committees of the City's social service centers
(B) implements federal and state regulations which call for community control of planning and evaluation of services
(C) emphasizes participation of local residents in service delivery rather than in planning and evaluation
(D) makes evaluation the responsibility of consumers of social services.

32. When the citizens of a disadvantaged community generally have a positive belief that they can work together in solving their problems, and thus achieve worthwhile goals, they are usually said to be working toward a community that is

(A) complex (B) diverse (C) functional (D) underorganized.

33. Which of the following is most likely to produce an initial positive response by local residents toward a community project?

(A) Adoption of the cultural mannerisms and typical dress of local residents.
(B) Endorsement by a person or an institution trusted by local residents.
(C) Solution of a problem for the community to show good faith.
(D) Promising solutions for all the problems facing the community.

34. Of the following, the most common mistake made by participants in social controversy is to

(A) attribute a single point of view of all people of a certain group
(B) try to understand all sides of the controversy
(C) play down the controversy, in the hope that it will disappear
(D) expect a cooperative resolution of the controversy.

35. Of the following, the most probable result of citizen involvement in a community crisis situation is

(A) stronger identification with community organizations and institutions
(B) decreased effectiveness in the operation of community organizations
(C) more accurate reporting of community events by mass media
(D) loss of confidence in public agencies and private social services.

36. Research in the form of fact finding constitutes a necessary foundation for community planning and action. The one of the following which is <u>least</u> likely to be a purpose of this type of research is to

(A) evaluate services
(B) determine needs
(C) establish priorities
(D) develop a theory.

37. "Administrative decentralization" gives more authority to City agency chiefs at the district level, as contrasted with "political decentralization," which gives more decision-making power to local residents. Of the following, the most important reason for emphasizing administrative decentralization would be to

(A) remove decision-making power from local groups, because recent crises have shown that neighborhoods are not yet ready for community control
(B) provide assurance that district chiefs of City agencies coordinate their actions with their central offices
(C) encourage community participation in those neighborhoods where local residents have not taken the initiative to become involved in decion-making
(D) provide essential administrative control at the neighborhood level in order to give community groups more assurance that their projects can be carried out.

38. The "outreach" function provides a means of reaching out to disadvantaged community residents in order to become familiar with their needs and problems and to inform them of services available. Which of the following would probably perform this function most effectively in their own neighborhoods?

(A) community leaders
(B) paraprofessionals
(C) small businessmen
(D) school teachers.

39. When people of a disadvantaged community are given the opportunity to gain satisfaction and self-confidence from small accomplishments, the most probable result is

(A) discouragement of progress toward major goals
(B) development of a false sense of achievement
(C) progress toward overcoming more difficult problems
(D) development of unrealistic and unachievable ambitions.

40. At times it is necessary for a community group to form a temporary work alliance with other self-interest community groups for the mutual support of programs. Such a temporary work alliance is usually called a

(A) federation
(B) coalition
(C) union
(D) society.

GO ON TO NEXT PAGE

Answer questions 41 through 46 solely on the basis of the following passage.

Too often in the past society has accepted the existing social welfare programs, preferring to tinker with refinements when fundamental reform was in order. It has been a demeaning, degrading welfare system in which the instrument of government was wrongfully and ineptly used. It has been a system which has only alienated those forced to benefit from it and demoralized those who had to administer it at the level where the pain was clearly visible.

There is a need to put this nation on a course in which cash benefits, providing a basic level of support, are conferred in such a way as to intrude as little as possible into privacy and self-respect. It is difficult to define a basic level of support, no matter how high or low it might be set. In the end, however, the decision is not determined so much by how much is truly adequate for a family to meet all of its needs, but by the resources available to carry out the promise. That may be a harsh fact of life but it is also just that - a fact of life.

41. Of the following, the most suitable title for the foregoing passage would be

(A) The Need for Government Control of Welfare
(B) Determining the Basic Level of Support
(C) The Need for Welfare Reform
(D) The Elimination of Welfare Programs.

42. In this passage, the author's greatest criticism of the welfare system is that it is too

(A) disrespectful of recipients
(B) expensive to administer
(C) limited by regulations
(D) widespread in application.

43. According to the passage, the basic level of support is actually determined by

(A) how much is required for a family to meet all of its needs
(B) the age of the recipients
(C) how difficult it is to administer the program
(D) the economic resources of the nation.

44. In this passage, the author does not argue for

(A) a work incentive system
(B) a basic level of support
(C) cash benefits
(D) the privacy of recipients.

45. As used in the foregoing passage, the underlined word demeaning means, most nearly,

(A) ineffective (B) expensive (C) overburdened (D) humiliating.

46. As used in the foregoing passage, the underlined word ineptly means, most nearly,

(A) foolishly (B) unsuccessfully (C) unskillfully (D) unhappily.

Answer questions 47 through 50 solely on the basis of the following paragraph.

The unemployment rate, which counts those unemployed in the sense that they are actively looking for work and unable to find it, gives a relatively superficial index of economic conditions in a community. A better index is the subemployment rate which includes the unemployment rate and also includes those working part-time while they are trying to get full-time work; those heads of households under 65 years of age who earn less than $60 per week working full-time, and those individuals under 65 who are not heads of households and earn less than $56 per week in a full-time job; and an estimate of the males "not counted," which is a very real concern in ghetto areas.

47. Of the following, the most suitable title for the foregoing paragraph would be

(A) Employment in the United States
(B) Part-time Workers and the Economy
(C) The Labor Market and the Community
(D) Two Indicators of Economic Conditions.

48. On the basis of the paragraph, which of the following statements is correct?

(A) The unemployment rate includes everyone who is not fully employed.
(B) The subemployment rate is higher than the unemployment rate.
(C) The unemployment rate gives a more complete picture of the economic situation than the subemployment rate.
(D) The subemployment rate indicates how many part-time workers are dissatisfied with the number of hours they work per week.

49. As used in the foregoing paragraph, the underlined word superficial means most nearly

(A) exaggerated (B) official (C) surface (D) current.

50. According to the paragraph, which of the following is included in the subemployment rate?

(A) Everyone who is unemployed.
(B) All part-time workers.
(C) Everyone under 65 who earns less than $56 per week in a full-time job.
(D) All heads of households who earn less than $60 per week in a full-time job.

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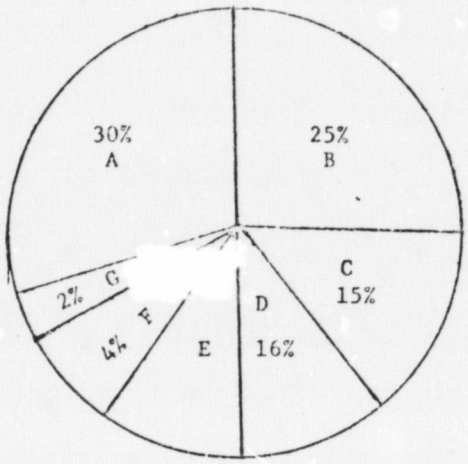
Exhibit N-1 Annexed to Defendants' Stipulated Facts

Answer questions 51 through 55 solely on the basis of the diagram presented below.

HOW THE INNER-CITY FAMILY IN URBANVILLE SPENDS ITS MONEY



A. Food

B. Shelter

C. Clothing

D. Household Operation

E. Medical Care

F. Transportation

G. Miscellaneous

51. According to the diagram, the percentage spent on medical care is

(A) 7% (B) 8% (C) 16% (D) 18%

52. According to the diagram, the total percentage spent on food, shelter, and clothing is

(A) 55% (B) 60% (C) 70% (D) 75%

53. In a typical period, if the family spent $30 on transportation how much did it spent on household operation?

(A) $120 (B) $192 (C) $300 (D) $480

54. If the family income is $125 a week, how much does it spend on transportation each year?

(A) $60 (B) $260 (C) $600 (D) $2,600

55. Assume that the annual income of a family was $5,400 for several years. Last year, the income went up 5%, and the family then tripled the typical percentage for household operation. The amount spent on this item last year was most nearly

(A) $891 (B) $1,134 (C) $1,296 (D) $2,721

Exhibit N-1 Annexed to Defendants' Stipulated Facts

Answer questions 56 through 60 solely on the basis of the table presented below.

AFDC Family Members in Urbanville

Referred to and Enrolled in WIN Program, 1969-1971

	Referred		Enrolled	
Family Member	1969	1971	1969	1971
Mother	1,091	1,306	730	877
Father	743	950	520	731
Child, age 16 and over	170	222	150	184

56. According to the table, how many AFDC family members were referred to WIN in 1971?

(A) 1,792 (B) 2,004 (C) 2,388 (D) 2,478

57. According to the table, the number of AFDC children, 16 and over, who were enrolled in WIN in 1971, was greater than the number enrolled in 1969 by

(A) 12 (B) 34 (C) 38 (D) 52

58. According to the table, the number of AFDC mothers who were enrolled in 1971 increased over the number enrolled in 1969 most nearly by

(A) 20% (B) 32% (C) 54% (D) 83%

59. In 1972, if the number of AFDC mothers referred to WIN increases 5% over 1971, the number of fathers referred increases 8% over 1971, and the number of children referred increases 5% over 1971, the total number of AFDC family members that will be referred in 1972 is most nearly

(A) 1424 (B) 1524 (C) 3130 (D) 3990

60. According to the table, the percentage of AFDC fathers not enrolled in WIN in 1971 of the number referred that year is most nearly

(A) 23% (B) 25% (C) 71% (D) 77%

61. The one of the following which accounts for the largest portion of the budget of the Human Resources Administration is

(A) personnel and support services
(B) public assistance and medicaid
(C) services to children and youth
(D) community organization and development.

62. According to the latest statistics published by the U.S. Department of Health, Education and Welfare, the state which spent the largest amount of money per person for public assistance is

(A) California (B) Massachusetts (C) Pennsylvania (D) New York.

63. According to the most recent U.S. Census Bureau Report, the group living in New York City which has the lowest income level is the

(A) Blacks (B) Puerto Ricans (C) Dominicans (D) Haitians.

64. The group that contains the largest number of individuals receiving public assistance is:

(A) children under working age
(B) unemployed heads of families
(C) the aged, disabled and blind
(D) unemployed single persons.

65. A major difficulty faced by new arrivals to cities since 1950, which did not exist for earlier European immigrants, is the fact that the majority of present-day arrivals

(A) must forfeit their native culture patterns
(B) have an obviously darker skin color than most long-time residents
(C) have little education
(D) have few occupational skills.

66. Generally speaking, low-income persons do not make maximum use of opportunities and services available to them, mainly because

(A) most paraprofessional workers, while sincere in the desire to serve, are unable to reach the hard core
(B) much of the routine paperwork in public assistance programs is now assigned to paraprofessional workers
(C) they have become increasingly self-reliant and prefer to cope with their problems without help
(D) they lack the confidence and know-how necessary to make their needs known to the proper persons or agencies.

67. The one of the following problems which has most recently become a serious concern of the Youth Service Agency is the

(A) increasing high school drop-out rate
(B) resurgence of fighting youth gangs
(C) spread of youth narcotics addiction
(D) lack of recreation programs.

68. Of the following, the most recent development with regard to welfare recipients is

(A) introduction of the declaration of need instead of an investigation of eligibility
(B) a major emphasis on employment programs
(C) increased use of casework therapy and psychiatric counselling
(D) acceptance of narcotics addicts for home relief.

69. According to a recent decision by a Federal court, requiring reporting at State Employment Service offices to pick up checks or accept work can no longer be required of recipients of

(A) Aid to the Disabled
(B) Home Relief
(C) Aid to Dependent Children
(D) Medicaid

70. A basic objective of the proposal for revenue sharing currently under consideration by the U.S. Congress is to provide

(A) state and local governments with new sources of revenue from the federal government and greater control over how this revenue is spent
(B) the federal government with greater control over spending of certain federally-raised tax revenues
(C) safeguards against improper allocation of funds by state and local officials and incentives to states for reporting violations by local government
(D) a method of sharing federal revenue with the states and localities in accordance with their required expenditures for public assistance and social welfare services.

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71. Acceptance of which of the following services provided by the Department of Social Services for public assistance clients is not voluntary on the part of the clients?

(A) Home management
(B) Family planning
(C) Child protection
(D) Educational counselling.

72. The one of the following which is not part of the organization of the Youth Services Agency is the

(A) Neighborhood Youth Corps
(B) Recreation Support Program
(C) Youth Development Centers
(D) Youth Vocational Training Program.

73. The one of the following which is not included under the recently organized Office of Special Services for Adults in the Department of Social Services is

(A) senior citizen programs
(B) Medicare
(C) foster care for the aged and disabled
(D) adult institutions.

74. Several juvenile detention centers formerly run by the New York State Office of Probation are now operated by the

(A) Youth Services Agency
(B) Department of Social Services
(C) Office of Child Development
(D) Judicial Conference.

75. Decentralized administration of the City's anti-poverty efforts is provided by the

(A) Community Corporations
(B) Council Against Poverty
(C) Human Resources District Councils
(D) Neighborhood Youth Corps.

76. The Social Service Exchange is correctly described as a

(A) recruitment center for the training and placement of volunteers for social and health agencies
(B) center which maintains a central index of case records of families and individuals known to social and health agencies
(C) center which provides information about and makes referrals to social and health agencies and proprietary nursing homes
(D) confidential advisory service to help potential contributors evaluate local voluntary health and welfare agencies.

77. Which one of the following is an important purpose of the formation of the Office of Special Services for Children in the Department of Social Services?

(A) Greater programmatic integration of the protective and supportive services to children who are abused, neglected, dependent, delinquent or in need of services.
(B) More professional attention to child abuse cases and prompt court action to penalize parents of abused or neglected children..
(C) Separation of programs and facilities for children adjudged to be delinquent from special services for other dependent, abused or neglected children.
(D) Increased attention to home-finding and foster care and adoption services rather than institutional care for dependent children.

78. The one of the following which is provided by the Department of Social Services for current, former and potential public assistance recipients only is

(A) information services
(B) child welfare services
(C) referral services
(D) homemaker services.

79. A major goal of the Department of Social Services which is part of the current reorganization and the separation of income maintenance from social services is to

(A) limit the provision of public social services to those New Yorkers who are eligible for public assistance
(B) make public social services available to all New Yorkers, whether or not they require financial assistance
(C) refer clients who require social services to private agencies wherever possible
(D) emphasize casework treatment and referral of clients for psychiatric services rather than programs to effect environmental change.

80. Of the following, the main functions of the Manpower and Career Development Agency (MCDA) of the Human Resources Administration are to

(A) train the unskilled, upgrade existing skills, develop job opportunities, and place newly-trained people in jobs
(B) operate manpower, recruitment and testing centers under contract with private organizations
(C) provide remedial education and follow-up for disadvantaged potential college students and vocational testing and counselling for veterans and ex-addicts
(D) provide job development, interviewing and placement, and manpower research services.

ANSWER SHEET CORRECTION: You may take the question booklet with you. When you have completed the test, remain seated and answer the question. The monitor will pick up your answer sheet. Leave the building quickly and quietly. You should note a correction you wish to make and include this number in any future correspondence with the Department of Personnel with respect to this examination.

KEY ANSWERS AND PROTESTS: The proposed key answers to this test will be posted on the Official Notices Bulletin Board of the Application Section of the Department of Personnel, 49 Thomas Street, New York, N.Y., beginning 10/25/72 for a period of three days. Candidates who wish to file protests against the proposed key answers must submit in writing such protests together with their reasons for such protests. Such protests must be postmarked not later than 11/15/72, and must contain the candidate's application number. Protests should be addressed to the Department of Personnel, 55 Thomas Street, New York N.Y. 10013, with the examination title written on the face of the envelope. Protests postmarked later than 11/15/72 will not be considered.

Protests should be clear and legible, preferably typewritten. Each protest must begin on a separate page and state the number of the question being protested. Protests should begin by indicating which answer the candidate considers correct, and should present reasoned arguments and clearly identify any quoted sources or authorities. Each page must be signed by the candidate and state his address. Only protests submitted by individual candidates will be considered.

After the Department of Personnel has considered all protests, properly filed, it will make a final determination thereon and will thereafter post the final key on the Official Notices Bulletin Board of the Application Section of the Department of Personnel for a period of three days. Such posting constitutes official public notice by the Department of Personnel to all candidates of the final determination in this connection.

The Department of Personnel, in establishing key answers to this test, reserves the right to determine which of the answers listed for each question is to be deemed and accredited as acceptable, and whether more than one of the answers listed for each question is to be deemed acceptable and accredited as such. The Department further reserves the right to cancel and annul any question whenever, upon inquiry, it deems that none of the listed answers thereto can properly be considered acceptable.

Please do not telephone the Department of Personnel requesting information as to the progress of the rating of this examination. Such information will not be available to candidates. All candidates in this examination will be notified individually by mail of the rating they receive when the rating of all candidates in the examination has been completed. Notify this department promptly in writing of any change in your address to insure prompt delivery of such notice.

EXHIBIT N-2 ANNEXED TO
DEFENDANTS' STIPULATED FACTS

Application No. _____

Room No. _____

Seat No. _____

City of New York
Department of Personnel

EXAMINATION NO. 1099 - OPEN COMPETITIVE (O.C.) EXAMINATION FOR
SENIOR HUMAN RESOURCES SPECIALIST
EXAMINATION NO. 1094 - OPEN COMPETITIVE (O.C.) EXAMINATION FOR
SENIOR HUMAN RESOURCES SPECIALIST (MANPOWER DEVELOPMENT AND TRAINING)

Date: October 14, 1972 Total Time Allowed: 2½ Hours

Written Test - Weight 100, 70% Required

GENERAL INSTRUCTIONS

Fill in your application number, room number, and seat number at the top of this page.

BELLS: First Bell: Test booklet given out. READ THIS PAGE ONLY.
Second bell: Turn the page and begin work.
Third Bell: End of test. Stop all work. This bell is rung 2½ hours after the second bell. If you finish before, raise you hand to let the monitor know.

TEST BOOKLET: This test booklet has both tests and there should be 19 pages. All questions are of equal weight. Check your test booklet after the second bell to be sure it has all the pages and is not defective.

ANSWER THE QUESTIONS AS INDICATED BELOW:

IF YOU ARE TAKING ONLY EXAM. NO. 1099 - O.C. SENIOR HUMAN RESOURCES SPECIALIST: ANSWER QUESTIONS 1-80

IF YOU ARE TAKING ONLY EXAM. NO. 1094 - O.C. SENIOR HUMAN RESOURCES SPECIALIST (MDT): ANSWER QUESTIONS 1-70 AND 81-90

OR: If you are taking two or more tests follow the special instructions you have been given concerning questions to answer and time allowed.

You must hand in your test booklet, answer sheet, and all scrap paper after you finish. You may take nothing from the room with you except the "Candidate's Personal Record of Answers" sheet, on which you may make a record of your answers for future reference.

WARNING: Smoking is NOT allowed. You will be disqualified if you copy answers from anyone or use books or notes.

It is against the law to take the test for somebody else or to let somebody else take the test for you.

This test booklet is the property of the Department of Personnel and you must turn it in at the end of the test. It is worth more than $250. You will be subject to penalty if you do not turn it in.

After the test starts, nobody can leave till after 10:30 a.m. Nobody can come in after 10:30 a.m. If you want to drop out of the test and do not want to have your answers rated, write "I withdraw" on your answer sheet and sign your name.

DO NOT TURN THE PAGE UNTIL THE SECOND BELL IS RUNG

Exhibit N-2 Annexed to Defendants' Stipulated Facts

DIRECTIONS FOR ANSWERING QUESTIONS

Answer all questions on the official Answer Sheet before the third bell has rung. ONLY YOUR ANSWER SHEET WILL BE RATED.

For each question, select that answer which you believe to be the acceptable one among those listed and note the capital letter preceding your selected answer.

Then, on the official answer sheet, find the row numbered the same as the question and record your answer by blackening the space between the dotted lines immediately to the right of the capital letter representing your selected answer, using a No. 2 pencil.

When recording your answer with a No. 2 pencil, fill in the entire space between the dotted lines and the full length of the lines by pressing firmly on the pencil and using several strokes.

IF YOU WISH TO CHANGE AN ANSWER, ERASE THE OLD ANSWER COMPLETELY. Do not cross it out. Then record your new answer in the proper space.

Do not make any marks except your answer. More than one answer to a question or improperly erased answers or stray marks caused by resting the pencil on the paper may be counted as wrong answers.

Use pen (blue or black ink) for filling in the headings on your answer sheet but use only the No. 2 pencil for recording your answers.

Do not fold the answer sheet or damage the edges because the rating is done by machine.

Since there are only 4 answers listed for each question, the spaces to the right of the letter E on the answer sheet are not used for this examination.

To help you understand the procedure, the following sample item is given:

SAMPLE 0: The sum of 5 and 3 is

(A) 2 (B) 8 (C) 9 (D) 11.

The sum of 5 and 3 is 8, so that the acceptable answer is shown thus on your answer sheet:

SAMPLE 0: A ===== B ■■■■■ C ===== D =====

CONTINUE ON

FOLLOWING

PAGE

Exhibit N-2 Annexed to Defendants' Stipulated Facts

EXAMINATION NO. 1099

O.C. SENIOR HUMAN RESOURCES SPECIALIST

Held October 14, 1972

Following are the key answers to be used for rating of candidates' papers in this test. These key answers are published now for information only. NO PROTESTS OR APPEALS WILL BE ACCEPTED AT THIS TIME. Protests or appeals may be made only after official notification of test results.

1. A	28. A	55. D
2. A	29. D	56. D
3. A	30. B	57. B
4. C	31. A	58. A
5. D	32. C	59. C
6. A	33. B	60. A
7. B	34. A	61. B
8. A	35. A	62. D
9. D	36. D	63. B
10. A	37. D	64. A
11. A	38. B	65. B
12. A	39. C	66. D
13. A	40. B	67. B
14. A	41. C	68. B
15. A	42. A	69. C
16. A	43. D	70. A
17. B	44. A	71. B
18. B	45. D	72. D
19. A	46. C	73. B
20. A	47. D	74. B
21. A	48. B	75. B
22. C	49. C	76. C
23. C	50. C	77. B
24. D	51. B	78. A
25. B	52. C	79. A
26. C	53. A	80. D
27. A	54. B	

Exhibit N-2 Annexed to Defendants' Stipulated Facts

EXAMINATION NO. 1054

O.C. SERIES - MANPOWER SPECIALIST
(Manpower Development and Training)

[illegible] 24, 1972

Following are the key answers to be used for rating of candidates' papers in this test. These key answers are published now for information only. NO PROTESTS OR APPEALS WILL BE ACCEPTED AT THIS TIME. Protests or appeals may be made only after official notification of test results.

1. A	26. C	51. B	86. A
2. A	27. A	52. C	87. D
3. A	28. A	53. A	88. A
4. C	29. D	54. B	89. A
5. D	30. B	55. D	90. A.
6. A	31. A	56. D	
7. B	32. C	57. B	
8. A	33. B	58. A	
9. D	34. A	59. C	
10. A	35. A	60. A	
11. A	36. D	61. B	
12. A	37. D	62. D	
13. A	38. B	63. B	
14. A	39. C	64. A	
15. A	40. B	65. B	
16. A	41. C	66. D	
17. B	42. A	67. B	
18. B	43. D	68. B	
19. A	44. A	69. C	
20. A	45. D	70. A	
21. A	46. C	81. B	
22. C	47. D	82. B	
23. C	48. B	83. D	
24. D	49. C	84. D	
25. B	50. C	85. C	

Exhibit N-2 Annexed to Defendants' Stipulated Facts

1. Of the following, the best time for a supervisor to give advice about a job-related problem which a subordinate has brought up during an interview is usually after the

   (A) subordinate has told him all the facts
   (B) supervisor has determined the employee's unconscious motives for bringing up the problem
   (C) employee has submitted a written report on the problem
   (D) supervisor has discussed the problem with his superior.

2. Of the following, the situation in which a supervisor would have to make the greatest effort in order to communicate effectively with his subordinates would occur when

   (A) there is a large gap between the supervisor's background and experience and that of his subordinates
   (B) the subordinates have already learned about the information through informal channels
   (C) the subordinates have completed their education much more recently than the supervisor
   (D) the supervisor has been with the organization for a much shorter time than most of his subordinates.

3. Of the following, the factor which would be most critical in influencing whether subordinates accept or resent a supervisor's authority is the

   (A) manner in which the supervisor uses his authority
   (B) frequency with which the supervisor ignores minor violations of rules
   (C) degree of delegation to subordinates by the supervisor
   (D) cultural attitudes of individual subordinates toward authority.

4. In which one of the following situations would employees be most likely to accept temporarily difficult working conditions without excessive complaining?

   (A) The organization has a strict policy of disciplinary action against uncooperative employees.
   (B) Employees do not have the right to take part in "job actions" or strikes.
   (C) An atmosphere of mutual trust and good human relations exists between subordinates and managerial personnel.
   (D) Relationships between subordinates and managerial personnel are strictly businesslike.

5. Assume that an agency has been reorganized into integrated work teams. Instead of assigning employees performing the same task to a single unit, such as a typing pool, those performing different but interdependent parts of an activity are put into the same work group. Of the following, the most probable result of such a reorganization would be to

   (A) permit more efficient work scheduling
   (B) achieve greater economy
   (C) decrease training costs
   (D) improve employee job satisfaction.

6. The need for identification with a work group has been found to be one of the most powerful on-the-job motivations. Of the following, the employee who is <u>least</u> likely to have a strong attachment to his work group is one who

   (A) is at the very bottom of the organization's promotional ladder
   (B) belongs to a small department
   (C) works with others of similar background and interests
   (D) has worked for the organization for a considerable period of time.

7. According to many management experts, the one of the following situations which would be the most significant indication that employees of an organization are dissatisfied with their supervisors and feel that they are being treated unfairly is one in which

(A) employees submit a large number of work-related suggestions
(B) many employees are unproductive and seem to be continually loafing on the job
(C) union membership has recently increased
(D) turnover is low in spite of a comparatively good labor market.

8. A supervisor who has informal, friendly relationships with his subordinates is conducting himself

(A) appropriately; good informal relationships set the stage for better communication between the supervisor and subordinates on work-related problems
(B) inappropriately; subordinates who have informal relationships with their supervisor are not likely to accept his authority
(C) appropriately; friendly relationships between the supervisor and his subordinates will create a true feeling of equality between them
(D) inappropriately; subordinates are likely to become suspicious of insincerity and fearful of being manipulated.

9. Specialization is a commonly-used method of increasing productivity and efficiency in a large organization. Task specialization means that separate and comparatively simple parts of a more complex job are performed by different employees. Of the following, this type of specialization probably would not

(A) reduce training costs
(B) permit the use of more specialized equipment
(C) simplify the development of job controls
(D) give most employees a greater sense of accomplishment.

10. Some management experts who have studied informal communication patterns in large organizations believe that the office grapevine is an effective means of communication. Of the following, an important function performed by the grapevine is to

(A) permit feedback and spread information faster than most formal communication systems
(B) give employees important information from reliable sources
(C) permit management to identify rumor-mongers and troublemakers
(D) bring informal leaders to the attention of management.

11. Recent studies of morale and productivity tend to show that

(A) the correlation between morale and productivity is rather low
(B) high morale is associated with high productivity
(C) low morale is associated with high productivity
(D) low morale is associated with low productivity.

12. Research studies have indicated that teamwork among employees is most likely to result in higher productivity in a situation where

(A) employees accept as legitimate management's demands for higher productivity
(B) management strongly encourages the workers' competitive spirit
(C) employees are unified for the purpose of protecting themselves against management's demands
(D) management does not encourage employees to make independent decisions.

13. The relationship between boredom on the job and fatigue is correctly stated as follows:

(A) Boredom usually results in increased fatigue
(B) A worker usually becomes bored when he expends a minimum of physical energy.
(C) Fatigue usually results in boredom.
(D) A worker who is bored does not usually become fatigued.

14. The "halo effect" can properly be suspected of harming supervisor-subordinate relationships when the supervisor

(A) does not discriminate between the good and poor work of an employee considered by him to be generally superior
(B) expects his subordinates to treat him in an impersonal and formal manner
(C) hesitates to discipline employees because of an extreme need for them to like him
(D) is unable to gain his employees' confidence because he cannot shed his reputation for being hardboiled and unfair.

15. It is generally considered that the best interview is the one in which the interviewer talks less than the person interviewed. The one of the following which is an effective device to encourage the other person to talk during the interview is for the interviewer to

(A) summarize the feelings the person has expressed, omitting details and incidentals
(B) keep silent and show no indication of his reaction to what the person is saying
(C) clearly show his approval or disapproval of what the person is saying
(D) talk to the person in terms of concepts rather than specifics.

16. Studies of groups of workers doing the same job under the same conditions have shown that there are always a few workers who have more accidents than the rest. The one of the following which is <u>least</u> likely to be a finding of such studies is that those who have the most accidents probably are

(A) middle-aged
(B) poorly adjusted to work
(C) inexperienced at the job
(D) less efficient than other workers.

17. Work measurement has been defined as "the determination of the proper amount of time and effort required for the effective performance of a specific task." Of the following, the factor which would be <u>least</u> relevant in studying an operation by means of work measurement is whether the operation is

(A) repetitive with constant standards of quality
(B) compensated for at a prevailing rate of pay
(C) routine in nature and relatively easy to perform
(D) performed in large volume.

18. Of the following, "participative management" can be defined best as a method in which

(A) subordinates have formed groups for the purpose of gaining participation in the decisions of management
(B) management makes a practice of encouraging subordinates as a group to discuss and participate in decisions on a wide variety of work-related problems
(C) managerial employees are given varied assignments on a rotating basis
(D) management gives all employees the opportunity to participate in major policy decisions.

Exhibit N-2 Annexed to Defendants' Stipulated Facts

19. "Job enlarged motivation" has been described as a method of motivating employees by enabling them to derive satisfaction through doing the job itself. This approach to motivating employees would require management to

(A) assume that most employees like work and enjoy doing a good job
(B) encourage competition among employees for promotions and higher salaries
(C) emphasize improved fringe benefits and conditions of work
(D) consider employee needs to be more important than organizational needs.

20. If a supervisor should find that he must issue an order his subordinates will probably resist, it is advisable for the supervisor to <u>first</u>

(A) discuss the order with his subordinates and give them an opportunity to ask questions and make objections
(B) issue the order without comment and discourage discussion and objections by his subordinates
(C) inform his subordinates that he does not agree with the order he is going to give them, but must carry out the decisions of higher authority
(D) inform his subordinates that he will take disciplinary action against those who resist carrying out the order he will present to them.

21. When a supervisor finds that his subordinates differ considerably in the amount of attention and guidance they require of him, it would be most advisable for the supervisor to

(A) adjust his supervisory practices according to individual needs
(B) give an equal amount of attention and guidance to each subordinate in order to be fair
(C) give less responsibility to subordinates who seek reassurance
(D) permit employees who prefer independence to work strictly on their own.

22. Connecting lines on an organization chart represent lines of

(A) management quality controls
(B) work flow
(C) authority and responsibility
(D) fiscal accountability.

23. "General supervision" has been defined as a method in which the supervisor makes assignments in broad, general terms and gives considerable autonomy to subordinates, in accordance with their knowledge and abilities. A supervisor who uses this method is <u>least</u> likely to

(A) do different work from that of subordinates
(B) concentrate on long-range problems
(C) exert excessive pressure on subordinates
(D) devote considerable effort to training subordinates.

24. Of the following, the most important reason why a supervisor should be cautious about giving subordinates advice about personal problems is that the

(A) subordinate may blame him if the advice turns out to be misleading
(B) supervisor should not discuss personal problems with subordinates on office time
(C) subordinate may lose confidence in his ability to perform on the job
(D) supervisor may not know enough to give helpful advice.

25. Professional or technical consultants may be used most appropriately by a human services agency to

(A) direct staff conferences centered around programs
(B) give advice regarding the quality of service or the effectiveness of plans
(C) supervise implementation of programs they have developed
(D) direct the in-service training program.

26. Of the following, the most important step [illegible] disadvantaged community to

(A) accomplish particular tasks within the [illegible]
(B) evaluate its achievements in the light [illegible]
(C) prepare itself to function as an organized [illegible]
(D) collect information about the network of [illegible]

27. The goal of the current reorganization of the New York City Human Resources Administration is to provide services in the neighborhood, whenever feasible, in accordance with the needs of neighborhood residents. Of the following, a desirable result of this would be

(A) variation in the combination of services offered in each neighborhood
(B) uniformity of services offered in each neighborhood
(C) considerable variation in the amount of community participation in each neighborhood
(D) decrease in the need for utilization of existing community facilities.

28. Appropriate division of functions and responsibilities between the communities and central headquarters is vital to the successful administration of a decentralized human services agency in a large urban center. The one of the following which is not an appropriate function to be performed at the community level is

(A) review of district plans for policy compliance
(B) stimulation of maximum use of both new and existing resources
(C) review of service program goals and relationships
(D) operation of community service teams.

29. A new approach to the delivery of services currently being developed by the New York City Department of Social Services is the Community Social Services Program. The one of the following which is not a major feature of this program is

(A) stationing of personnel in locations that are easily accessible to clients
(B) decentralization of authority to make decisions regarding services
(C) use of purchased services from private organizations to complement directly-delivered services
(D) preparation of a single annual Human Services Plan applicable to all Human Resources Districts.

30. The Community Social Services Program of the Department of Social Services is being implemented initially in the following Human Resources Districts:

(A) The Lower East Side, Bushwick and Parkchester
(B) East New York, Washington Heights, and the Lower East Side
(C) Washington Heights, the Lower East Side, and Bedford-Stuyvesant
(D) South Jamaica, Central Harlem and Williamsburg.

31. Community participation is a key feature of the Community Social Services Program of the Department of Social Services. Of the following, a correct statement with regard to the community participation facet of the program is that it

(A) extends to the District level the consumer involvement aspect which was previously embodied in the client advisory committees of the City's social service centers
(B) implements federal and state regulations which call for community control of planning and evaluation of services
(C) emphasizes participation of local residents in service delivery rather than in planning and evaluation
(D) makes evaluation the responsibility of consumers of social services.

Exhibit N-2 Annexed to Defendants' Stipulated Facts

33. When the citizens of a disadvantaged community generally have a positive belief that they can work together in solving their problems, and thus achieve worthwhile goals, they are usually said to be working toward a community that is

(A) complex (B) diverse (C) functional (D) underorganized.

34. Which of the following is most likely to produce an initial positive response by local residents toward a community project?

(A) Adoption of the cultural mannerisms and typical dress of local residents.
(B) Endorsement by a person or an institution trusted by local residents.
(C) Solution of a problem for the community to show good faith.
(D) Promising solutions for all the problems facing the community.

35. Of the following, the most common mistake made by participants in social controversy is to

(A) attribute a single point of view of all people of a certain group
(B) try to understand all sides of the controversy
(C) play down the controversy, in the hope that it will disappear
(D) expect a cooperative resolution of the controversy.

36. Of the following, the most probable result of citizen involvement in a community crisis situation is

(A) stronger identification with community organizations and institutions
(B) decreased effectiveness in the operation of community organizations
(C) more accurate reporting of community events by mass media
(D) loss of confidence in public agencies and private social services.

37. Research in the form of fact finding constitutes a necessary foundation for community planning and action. The one of the following which is <u>least</u> likely to be a purpose of this type of research is to

(A) evaluate services
(B) determine needs
(C) establish priorities
(D) develop a theory.

38. "Administrative decentralization" gives more authority to City agency chiefs at the district level, as contrasted with "political decentralization," which gives more decision-making power to local residents. Of the following, the most important reason for emphasizing administrative decentralization would be to

(A) remove decision-making power from local groups, because recent crises have shown that neighborhoods are not yet ready for community control
(B) provide assurance that district chiefs of City agencies coordinate their actions with their central offices
(C) encourage community participation in those neighborhoods where local residents have not taken the initiative to become involved in decion-making
(D) provide essential administrative control at the neighborhood level in order to give community groups more assurance that their projects can be carried out.

38. The "outreach" function provides a means of reaching out to disadvantaged community residents in order to become familiar with their needs and problems and to inform them of services available. Which of the following would probably perform this function most effectively in their own neighborhoods?

(A) community leaders
(B) paraprofessionals
(C) small businessmen
(D) school teachers.

39. When people of a disadvantaged community are given the opportunity to gain satisfaction and self-confidence from small accomplishments, the most probable result is

(A) discouragement of progress toward major goals
(B) development of a false sense of achievement
(C) progress toward overcoming more difficult problems
(D) development of unrealistic and unachievable ambitions.

40. At times it is necessary for a community group to form a temporary work alliance with other self-interest community groups for the mutual support of programs. Such a temporary work alliance is usually called a

(A) federation
(B) coalition
(C) union
(D) society.

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Exhibit N-2 Annexed to Defendants' Stipulated Facts

solely on the basis of the following passage.

[illegible] has accepted the existing social welfare programs, with refinements when fundamental reform was in order. It has [illegible] welfare system in which the instrument of government [illegible] used. It has been a system which has only alienated [illegible] from it and demoralized those who had to administer it at [illegible] the pain was clearly visible.

[illegible] need to put this nation on a course in which cash benefits, providing a [illegible] level of support, are conferred in such a way as to intrude as little as [illegible] into privacy and self-respect. It is difficult to define a basic level of [illegible], no matter how high or low it might be set. In the end, however, the [illegible] tion is not determined so much by how much is truly adequate for a family to meet all of its needs, but by the resources available to carry out the promise. That may be a harsh fact of life but it is also just that - a fact of life.

41. Of the following, the most suitable title for the foregoing passage would be

(A) The Need for Government Control of Welfare
(B) Determining the Basic Level of Support
(C) The Need for Welfare Reform
(D) The Elimination of Welfare Programs.

42. In this passage, the author's greatest criticism of the welfare system is that it is too

(A) disrespectful of recipients
(B) expensive to administer
(C) limited by regulations
(D) widespread in application.

43. According to the passage, the basic level of support is actually determined by

(A) how much is required for a family to meet all of its needs
(B) the age of the recipients
(C) how difficult it is to administer the program
(D) the economic resources of the nation.

44. In this passage, the author does <u>not</u> argue for

(A) a work incentive system
(B) a basic level of support
(C) cash benefits
(D) the privacy of recipients.

45. As used in the foregoing passage, the underlined word <u>demeaning</u> means, most nearly,

(A) ineffective (B) expensive (C) overburdened (D) humiliating.

46. As used in the foregoing passage, the underlined word <u>ineptly</u> means, most nearly,

(A) foolishly (B) unsuccessfully (C) unskillfully (D) unhappily.

Exhibit N-2 Annexed to Defendants' Stipulated Facts

Answer questions 47 through 50 solely on the basis of the following paragraph.

The unemployment rate, which counts those unemployed in the sense that they are actively looking for work and unable to find it, is as a relatively superficial index of economic conditions in a community. A better index is the subemployment rate which includes the unemployment rate and also includes those working part-time while they are trying to get full-time work; those heads of households under 65 years of age who earn less than $60 per week working full-time, and those individuals under 65 who are not heads of households and earn less than $56 per week in a full-time job; and an estimate of the males 'not counted," which is a very real concern in ghetto areas.

47. Of the following, the most suitable title for the foregoing paragraph would be

(A) Employment in the United States
(B) Part-time Workers and the Economy
(C) The Labor Market and the Community
(D) Two Indicators of Economic Conditions.

48. On the basis of the paragraph, which of the following statements is correct?

(A) The unemployment rate includes everyone who is not fully employed.
(B) The subemployment rate is higher than the unemployment rate.
(C) The unemployment rate gives a more complete picture of the economic situation than the subemployment rate.
(D) The subemployment rate indicates how many part-time workers are dissatisfied with the number of hours they work per week.

49. As used in the foregoing paragraph, the underlined word superficial means most nearly

(A) exaggerated (B) official (C) surface (D) current.

50. According to the paragraph, which of the following is included in the subemployment rate?

(A) Everyone who is unemployed.
(B) All part-time workers.
(C) Everyone under 65 who earns less than $56 per week in a full-time job.
(D) All heads of households who earn less than $60 per week in a full-time job.

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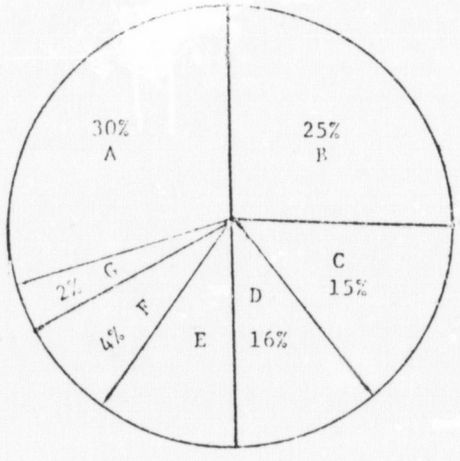
Exhibit N-2 Annexed to Defendants' Stipulated Facts

Answer questions 51 through 55 solely on the basis of the diagram presented below.

HOW THE INNER CITY FAMILY IN URBANVILLE SPENDS ITS MONEY



A. Food

B. Shelter

C. Clothing

D. Household Operation

E. Medical Care

F. Transportation

G. Miscellaneous

51. According to the diagram, the percentage spent on medical care is

(A) 7% (B) 8% (C) 16% (D) 18%

52. According to the diagram, the total percentage spent on food, shelter, and clothing is

(A) 55% (B) 60% (C) 70% (D) 75%

53. In a typical period, if the family spent $30 on transportation how much did it spent on household operation?

(A) $120 (B) $192 (C) $300 (D) $480

54. If the family income is $125 a week, how much does it spend on transportation each year?

(A) $60 (B) $260 (C) $600 (D) $2,600

55. Assume that the annual income of a family was $5,400 for several years. Last year, the income went up 5%, and the family then tripled the typical percentage for household operation. The amount spent on this item last year was most nearly

(A) $891 (B) $1,134 (C) $1,296 (D) $2,721

Exhibit N-2 Annexed to Defendants' Stipulated Facts

Answer questions 56 through 60 solely on the basis of the table presented below.

AFDC Family Members in Urbanville

Referred to and Enrolled in WIN Program, 1969-1971

	Referred		Enrolled	
Family Member	1969	1971	1969	1971
Mother	1,091	1,306	730	877
Father	743	950	520	731
Child, age 16 and over	170	222	150	184

56. According to the table, how many AFDC family members were referred to WIN in 1971?

(A) 1,792 (B) 2,004 (C) 2,388 (D) 2,478

57. According to the table, the number of AFDC children, 16 and over, who were enrolled in WIN in 1971, was greater than the number enrolled in 1969 by

(A) 12 (B) 34 (C) 38 (D) 52

58. According to the table, the number of AFDC mothers who were enrolled in 1971 increased over the number enrolled in 1969 most nearly by

(A) 20% (B) 32% (C) 54% (D) 83%

59. In 1972, if the number of AFDC mothers referred to WIN increases 5% over 1971, the number of fathers referred increases 8% over 1971, and the number of childr referred increases 5% over 1971, the total number of AFDC family members t wil be referred in 1972 is most nearly

(A) 1424 (B) 1524 (C) 3130 (D) 3990

60. According to the table, the percentage of AFDC fathers not enrolled in WIN in 197 of the number referred that year is most nearly

(A) 23% (B) 25% (C) 71% (D) 77%

Exhibit N-2 Annexed to Defendants' Stipulated Facts

61. The one of the following which accounts for the largest portion of the budget of the Human Resources Administration is

(A) personnel and support services
(B) public assistance and medicaid
(C) services to children and youth
(D) community organization and development.

62. According to the latest statistics published by the U.S. Department of Health, Education and Welfare, the state which spent the largest amount of money per person for public assistance is

(A) California (B) Massachusetts (C) Pennsylvania (D) New York.

63. According to the most recent U.S. Census Bureau Report, the group living in New York City which has the lowest income level is the

(A) Blacks (B) Puerto Ricans (C) Dominicans (D) Haitians.

64. The group that contains the largest number of individuals receiving public assistance is:

(A) children under working age
(B) unemployed heads of families
(C) the aged, disabled and blind
(D) unemployed single persons.

65. A major difficulty faced by new arrivals to cities since 1950, which did not exist for earlier European immigrants, is the fact that the majority of present-day arrivals

(A) must forfeit their native culture patterns
(B) have an obviously darker skin color than most long-time residents
(C) have little education
(D) have few occupational skills.

66. Generally speaking, low-income persons do not make maximum use of opportunities and services available to them, mainly because

(A) most paraprofessional workers, while sincere in the desire to serve, are unable to reach the hard core
(B) much of the routine paperwork in public assistance programs is now assigned to paraprofessional workers
(C) they have become increasingly self-reliant and prefer to cope with their problems without help
(D) they lack the confidence and know-how necessary to make their needs known to the proper persons or agencies.

67. The one of the following problems which has most recently become a serious concern of the Youth Services Agency is the

(A) increasing high school drop-out rate
(B) resurgence of fighting youth gangs
(C) spread of youth narcotics addiction
(D) lack of recreation programs.

68. Of the following, the most recent development with regard to welfare recipients is

(A) introduction of the declaration of need instead of an investigation of eligibility
(B) a major emphasis on employment programs
(C) increased use of casework therapy and psychiatric counselling
(D) acceptance of narcotics addicts for home relief.

Exhibit N-2 Annexed to Defendants' Stipulated Facts

69. According to a recent decision by a Federal court, regular reporting at State Employment Service offices to pick up checks or accept work can no longer be required of recipients of

(A) Aid to the Disabled
(B) Home Relief
(C) Aid to Dependent Children
(D) Medicaid

70. A basic objective of the proposal for revenue sharing currently under consideration by the U.S. Congress is to provide

(A) state and local governments with new sources of revenue from the federal government and greater control over how this revenue is spent
(B) the federal government with greater control over spending of certain federally-raised tax revenues
(C) safeguards against improper allocation of funds by state and local officials and incentives to states for reporting violations by local government
(D) a method of sharing federal revenue with the states and localities in accordance with their required expenditures for public assistance and social welfare services.

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Exhibit N-2 Annexed to Defendants' Stipulated Facts

72. The agency called Youth-in-Action is based in the following poverty area:

(A) South Jamaica
(B) South Bronx
(C) East New York
(D) Bedford-Stuyvesant.

73. The agency called HARYOU-ACT is based in the following poverty area:

(A) Williamsburg
(B) Central Harlem
(C) East Harlem
(D) Lower East Side.

74. Of the following, the organization which has waged an aggressive campaign to inform the poor of their legal rights is the

(A) Legal Aid Society
(B) National Welfare Rights Organization
(C) American Civil Liberties Union
(D) National Urban League.

75. Which one of the following programs is designed to meet the need for paraprofessionals in government agencies and institutions?

(A) Concentrated Employment Program
(B) Public Service Careers Program
(C) Opportunities Industrialization Center
(D) Work Incentive Program.

76. The popular name for the program authorized by Title I of the Demonstration Cities and Metropolitan Development Act of 1966 is the Federal

(A) Anti-Poverty Program
(B) Manpower Development and Training Program
(C) Model Cities Program
(D) Revenue Sharing Program.

77. An agency which currently sponsors supportive programs to rehabilitate former narcotics addicts through full-time paid employment in such fields as park maintenance, rodent control, and messenger services is the

(A) Volunteer Prison League
(B) Vera Institute of Justice
(C) Judicial Council
(D) Dayton Village.

78. Project Manhood Foundation can best be described as an organization which provides

(A) manpower services for former convicts aged 16 and over
(B) supportive counselling for former narcotics addicts
(C) remedial education and vocational training for juvenile offenders
(D) skills training for the disabled.

79. The correct description of the functions of ASPIRA is that the organization provides disadvantaged youth of Puerto Rican background with

(A) educational counselling, financial assistance and career planning services
(B) vocational counselling and training in the skilled trades
(C) remedial, rehabilitative and recreational services
(D) remedial education and vocational placement services.

80. Which of the following is a federal residential program that offers work experience, education, and skills training for disadvantaged youth from 16 to 21 years of age?

(A) Training Resources for Youth
(B) Youth Employment Service
(C) Vocational Foundation Incorporated
(D) Job Corps.

81. It is generally considered advisable for an employee who has a grievance or is dissatisfied with some condition at work to first

(A) try to transfer to a job with more favorable conditions
(B) express his complaints fully and freely to his supervisor
(C) submit his complaint in writing to higher managerial personnel
(D) take advantage of the organization's formal grievance procedure.

82. Most of the jobs subsidized by the federal government under the Emergency Employment Act have gone to

(A) working mothers
(B) veterans and heads of low-income households
(C) low-income college graduates
(D) workers with clerical skills.

83. The largest number of jobs available in New York City is in the category of

(A) sales
(B) manufacturing
(C) office work
(D) service.

84. The function of the Work Incentive Program (WIN) is to provide work experience and skills training for

(A) high-school dropouts
(B) veterans
(C) handicapped men and women
(D) heads of families on welfare.

85. Of the following, the most important function of employment testing is to

(A) determine what salary to pay the applicant
(B) indicate how applicants react in pressure situations
(C) provide information about an applicant's aptitudes and abilities
(D) determine when an employee will be ready for advancement.

86. Of the following, the most important reason why comprehensive information on job vacancies on a nationwide basis is significant in the development of economic policy is that such information indicates

(A) the amount and character of the unfilled demand for labor
(B) possible areas of existing discrimination against minority group members
(C) the number of hard-core unemployed in a particular urban center
(D) the number of job vacancies which are filled by migrant workers.

87. Of the following manpower programs, the one which does not receive federal funds is the

(A) Job Corps
(B) Neighborhood Youth Corps
(C) Work Incentive Program
(D) Emergency Placement Program.

88. The Wonderlic Personnel Test is a widely used standardized test which aims to predict employment success. A study of an experimental group of disadvantaged youth who were successfully employed after participation in a training program showed that this group's scores on the test were considerably lower than those listed in the test manual as minimum passing scores for particular occupations. Of the following, the most appropriate conclusion that can be drawn from these results is that the

(A) test is not a valid test for the experimental group
(B) experiment was poorly conducted and should be repeated under improved conditions
(C) youths may actually be in need of additional training
(D) test is not useful in predicting on-the-job success for any group.

89. Job restructuring can provide new careers for the disadvantaged by

(A) creating entry-level positions and meaningful promotion opportunities for inexperienced persons
(B) eliminating the more difficult duties of a job
(C) lowering the educational qualifications for higher-level jobs
(D) training individuals in those aspects of a job in which they are not skilled.

90. The New York Plan is designed to provide jobs and training for minority group members in the

(A) building and construction trades
(B) garment and needle trades
(C) printing and publishing trades
(D) waterfront and warehousing trades.

Exhibit N-2 Annexed to Defendants' Stipulated Facts

ANSWER SHEET COLLECTION: You are required to hand in your question booklet, answer sheet, and all scratch paper after completing the test. Any candidate leaving the room with the question booklet or scratch paper in his possession will be disqualified. When you have completed the test, remain seated and summon the monitor. The monitor will pick up your answer sheet, question booklet, and scratch paper. Leave the building quickly and quietly. You should make a note of your application number and include this number in any future correspondence with the Department of Personnel with respect to this examination.

The Department of Personnel, in establishing the key answers to this test, reserves the right to determine which of the answers listed for each question is to be deemed and accredited as acceptable. The Department of Personnel further reserves the right to cancel and annul any question whenever, upon inquiry, it deems that none of the listed answers thereto can properly be considered acceptable.

KEY ANSWERS: The rating key for this test will be posted on the Official Notices Bulletin Board of the Application Section of the Department of Personnel, 49 Thomas Street, New York, N.Y. 10013, for a period of three days beginning October 25, 1972.

Please do not telephone the Department of Personnel requesting information as to the progress of the rating of this examination. Such information will not be available to candidates. All candidates in this examination will be notified individually by mail of the rating they receive when the rating of all candidates in the examination has been completed. Notify this Department promptly in writing of any change in your address to insure prompt delivery of such notice.

250a

EXHIBIT N-3 ANNEXED TO
DEFENDANTS' STIPULATED FACTS

THE CITY OF NEW YORK
DEPARTMENT OF PERSONNEL

Appl. No. _____

PROMOTION TO HUMAN RESOURCES SPECIALIST
EXAMINATION NO. 1625

Written Test - Weight 85, 70% Required

October 14, 1972

GENERAL INSTRUCTIONS

Time Allowed: 2½ Hours

SIGNALS

First Signal: Question booklets distributed. READ THIS PAGE ONLY.
Second Signal: Open your booklet. Begin work.
Third Signal: End of test. Stop all work. This signal is given 2½ hours after the second signal. If you finish before the third signal, summon the monitor. No extra time is allowed on account of lateness. The time allowed includes time for fingerprinting.

BOOKLETS

This test booklet should consist of 18 consecutively numbered pages. There are 80 questions, all of equal weight. ANSWER ALL QUESTIONS. Examine your booklet after the second signal is given to be sure it is not defective in any way. You are responsible for obtaining a complete booklet.

You may make a record of your answers in the test booklet and you may take the test booklet with you. This is necessary in the event that you wish to protest the proposed key answers. The time allowed includes time for recording your answers and no time may be taken for this purpose after the third signal is given. Further information concerning key answers and protests appears at the end of the test booklet.

If you read these instructions carefully, you will not need to make inquiries. No monitor is authorized to change these instructions or the terms and conditions of this test. You will be DISQUALIFIED if you obtain or attempt to obtain information or help from books or other sources, copy or attempt to copy or read the work of another candidate, permit your work to be copied or read by another candidate, communicate in any way with another candidate, leave your seat without permission of the monitor, sign your name or put any identifying mark on any answer sheet, or disobey an instruction of an examiner. You are prohibited from having on your desk or in your possession during the course of the test any reference materials, notes, or newspapers which you have brought with you.

It is a misdemeanor for anyone to impersonate a candidate or permit himself to be impersonated at an examination.

Smoking is NOT permitted.

LEAVING

During the test you may not leave your seat except when necessary, and then only when accompanied by a monitor. You may withdraw without completing this test and not have your test rated by writing "I withdraw" and your signature on your answer sheet and giving it to the monitor. However, no candidate will be permitted to depart before 10:30 a.m.

DO NOT OPEN THIS BOOKLET UNTIL THE SECOND SIGNAL IS GIVEN

Exhibit N-3 Annexed to Defendants' Stipulated Facts

DIRECTIONS FOR ANSWERING QUESTIONS

Answer all questions on the official Answer Sheet before the third bell has rung. ONLY YOUR ANSWER SHEET WILL BE RATED.

For each question, select that answer which you believe to be the acceptable one among those listed and note the capital letter preceding your selected answer.

Then, on the official answer sheet, find the row numbered the same as the question and record your answer by blackening the space between the dotted lines immediately to the right of the capital letter representing your selected answer, using a No. 2 pencil.

When recording your answer with a No. 2 pencil, fill in the entire space between the dotted lines and the full length of the lines by pressing firmly on the pencil and using several strokes.

IF YOU WISH TO CHANGE AN ANSWER, ERASE THE OLD ANSWER COMPLETELY. Do not cross it out. Then record your new answer in the proper space.

Do not make any marks except your answer. More than one answer to a question or improperly erased answers or stray marks caused by resting the pencil on the paper may be counted as wrong answers.

Use pen (blue or black ink) for filling in the headings on your answer sheet but use only the No. 2 pencil for recording your answers.

Do not fold the answer sheet or damage the edges because the rating is done by machine.

Since there are only 4 answers listed for each question, the spaces to the right of the letter E on the answer sheet are not used for this examination.

To help you understand the procedure, the following sample item is given:

SAMPLE 0: The sum of 5 and 3 is

(A) 2 (B) 8 (C) 9 (D) 11.

The sum of 5 and 3 is 8, so that the acceptable answer is shown thus on your answer sheet:

SAMPLE 0: A ===== B ▬▬▬ C ===== D =====

CONTINUE ON

FOLLOWING

PAGE

Exhibit N-3 Annexed to Defendants' Stipulated Facts

EXAMINATION NO. 1625

PROMOTION TO HUMAN RESOURCES SPECIALIST

Final Key Answers for Written Test
Held October 14, 1972

The following are the final key answers as adopted by the Commission at a meeting held on _____. These key answers result from careful consideration of all protests submitted by candidates.

1. C	21. B	41. C	61. B
2. B	22. D	42. A	62. D
3. A	23. A	43. D	63. B
4. C	24. C	44. A	64. A
5. B	25. A	45. D	65. B
6. C	26. A	46. C	66. D
7. A	27. B	47. D	67. B
8. B	28. B	48. B	68. B
9. B	29. A	49. C	69. C
10. B	30. B	50. C	70. A
11. C	31. B	51. B	71. C
12. C	32. D	52. C	72. A
13. C	33. A	53. A	73. B
14. A	34. C	54. B	74. B
15. B	35. A	55. D	75. B
16. B	36. C	56. D	76. B
17. C	37. A	57. B	77. A
18. C	38. C	58. A	78. D
19. B	39. A	59. C	79. B
20. D	40. B	60. A	80. A.

Exhibit N-3 Annexed to Defendants' Stipulated Facts

1. The term "first-line supervisor" refers to the lowest level of supervision in an organization. A dilemma faced by the first-line supervisor is that he represents

(A) management
(B) labor
(C) management and labor
(D) neither management nor labor.

2. Management experts generally consider it advisable to give instructions orally, even though these instructions may later be put in writing for permanent reference. The main reason for this advice is that

(A) employees sometimes misplace written instructions
(B) explanations can be made in accordance with individual needs
(C) written instructions tend to be unclear and ambiguous
(D) employees resent being given instructions in writing.

3. Of the following, the best reason why a supervisor should not delegate a certain job to a subordinate is that

(A) he does not have any subordinate who can develop the skills needed to do the job
(B) it is easier and quicker to do it himself
(C) he knows it will be done correctly if he does it himself
(D) he enjoys doing it himself.

4. Of the following, the step which the supervisor should take first in handling a complaint from a member of his staff is to

(A) gather background information relevant to the complaint
(B) establish tentative solutions or answers to the complaint
(C) determine the nature of the complaint as clearly and as fully as possible
(D) make a determination as to whether the complaint is valid.

5. Before a supervisor delegates one of the duties which he normally performs to a member of his staff, the first thing he should do is

(A) determine the long-range purpose of the job
(B) determine exactly what tasks the job involves
(C) decide how long it takes him to do the job
(D) decide to whom he will assign the job.

6. When an employee is not sure of the intent of a policy statement, it is usually best for him to consult

(A) a fellow worker
(B) a member of the planning staff
(C) his supervisor
(D) the manual of procedures.

7. The most appropriate time for a supervisor to have a discussion with an employee who has violated an agency policy is

(A) as soon as possible after the violation has occurred
(B) after a cooling-off period has elapsed
(C) the day after the violation occurred
(D) during the next staff meeting.

8. Of the following, the most appropriate use of staff conferences is to enable the supervisor to

(A) inform staff of the latest administrative policies
(B) obtain the benefits of collective thinking about a problem
(C) let staff know that he is aware of violations of personnel policies
(D) give dissatisfied employees a chance to voice their grievances.

9. Of the following, a term used to describe how a supervisor may determine whether he is communicating effectively with his staff is called

(A) backlash
(B) feedback
(C) implementation
(D) delegation.

10. False rumors about unpleasant possibilities such as employee cutbacks can do serious damage to morale. Most rumors of this kind in large organizations and public agencies are caused by

(A) over-permissiveness and general laxity of supervision
(B) a breakdown in communication between management and employees
(C) employees who distort the facts for their own purposes
(D) newspaper articles planted by special interest groups.

11. Of the following, staff meetings are <u>least</u> likely to be productive when

(A) only four or five people are present
(B) the chairman conducts the meeting in a formal manner
(C) discussion is kept to a minimum
(D) private discussions are not allowed.

12. The one of the following persons who usually would be classified as belonging to middle management is the

(A) senior clerk
(B) agency head
(C) bureau director
(D) deputy commissioner.

13. Of the following, the best way for a person to develop competence as an interviewer is to

(A) attend lectures on interviewing techniques
(B) practice with employees on the job
(C) conduct interviews under the supervision of an experienced instructor
(D) attend a training course in counselling.

14. Of the following, the type of employee who would probably expect to be given the most authority to use independent judgment is the

(A) chemical engineer
(B) clerical worker
(C) bookkeeper
(D) registered nurse.

15. Assume that you are asked to study and report on employee turnover in several agency units which vary widely as to total number of employees and the number of employees involved in turnover. In order to present an accurate picture of turnover, your report should show, with regard to persons leaving, both actual numbers and

(A) central tendencies
(B) percentages
(C) raw data
(D) rounded totals.

16. Many employees tend to resist a reorganization because they feel that their status and security are threatened. Of the following, the best way to make it easier for employees to accept the changes necessitated by reorganization is to

(A) introduce many changes at the same time
(B) give them a chance to participate in evaluating proposed changes
(C) keep the changes secret until they are put into effect
(D) have staff people who have had little contact with the affected employees initiate the changes.

17. The most important reason for investigating every accident on the job is to

(A) find out who was responsible for the accident
(B) determine the organization's legal liability for the accident
(C) correct the conditions or actions which caused the accident
(D) discipline the employee who caused the accident.

18. Research studies indicate that an important difference between high-production and low-production supervisors lies in their manner of handling mistakes. When subordinates make mistakes, the high-production supervisor probably would

(A) concentrate on fixing responsibility and determining the subordinate's excuse for the mistake
(B) take over the assignment himself in order to avoid recurrence of the mistake
(C) look upon the mistake as an opportunity to provide training
(D) give the assignment to a subordinate who is not likely to repeat the mistake.

19. The use of statistical controls is generally considered to be one of management's most effective means of determining what is happening at the operating level of an agency. Of the following, statistical controls are <u>least</u> useful for

(A) furthering coordination
(B) measuring morale
(C) setting standards
(D) pinpointing responsibility.

20. A basic problem of the supervisor is how to motivate employees. One approach is to "internalize" motivation by providing opportunities for employees to derive satisfaction from the work itself. Of the following, internalized motivation would be the <u>least</u> effective approach where the employee

(A) enjoys autonomy because of the nature of the job
(B) accepts the organization's objectives
(C) makes the job his central life focus
(D) does a routine or assembly line job.

21. Of the following, an important goal of the current reorganization of the New York City Human Resources Administration is to

(A) strengthen the centralization of services at agency headquarters
(B) provide services within the neighborhoods, according to local needs
(C) equalize the distribution of responsibilities between headquarters and neighborhood offices
(D) give more authority and responsibility to neighborhood offices than to headquarters.

22. The one of the following which is not a purpose of the movement toward decentralization of New York City government is to

(A) reduce citizen alienation
(B) bolster City services
(C) respond to local needs
(D) discourage the local power structure.

23. Of the following, the most desirable way to strengthen the capacity of communities to contribute to the solution of their own problems is to

(A) encourage participation of local residents in service planning and delivery
(B) establish city-wide job training programs
(C) reduce technical assistance to local small business so that they will learn by experience
(D) make local residents accountable to government agencies for funds and services provided.

24. In organizing the residents of a disadvantaged neighborhood to develop projects for community improvement, the most effective of the following approaches is to

(A) concentrate on the group with most members
(B) devote more attention to groups which have vested interests
(C) try to include all groups
(D) give special consideration to official groups.

25. The one of the following which has been the most common problem which occurs when attempts are made to obtain community participation in a project such as a neighborhood improvement program is

(A) domination by an aggressive but unrepresentative group
(B) public opposition by representatives of government agencies
(C) fragmentation and disruption of community services
(D) serious deterioration in the quality of services.

26. Of the following, the most important aim of the community organizer in his early contacts with a community group should be to

(A) build a core of common interests
(B) establish himself as a forceful leader who can make decisions
(C) inform the group of its legal rights
(D) curb discussion of opposing viewpoints in order to develop harmonious relations.

27. The one of the following which is the best method of encouraging neighborhood people to attend a community meeting is to

(A) send out notices at least a week in advance
(B) set up an agenda that deals with issues of serious local concern
(C) invite a prominent public figure to address the meeting
(D) send invitations to community people with similar viewpoints on the problem to be discussed.

28. A basic difference between pure experimental research and action research is that experimental research is primarily concerned with the analysis of data for scientific or technological generalization, while action research is

(A) based on the results of trial and error
(B) designed to effect improvement in an on-going process
(C) intuitive rather than scientific in nature
(D) primarily concerned with the analysis of data for universal generalization.

29. Assume that a community worker is assigned to organize a client group to participate in planning for services they particularly need. Of the following, it would be least important for the organizer to become familiar with the

(A) local store owners
(B) neighborhood resources
(C) potential leaders
(D) informal leaders.

30. Of the following, the factor which is most important in encouraging a high level of local participation in community projects is the

(A) degree of sophistication of the local people
(B) attitudes of the community development workers towards the local people
(C) amount of money available for training
(D) amount of time available for stimulation of community interest.

31. Assume that you are the discussion leader of a meeting of a group of residents of a poverty area, many of whom are against a proposal to locate a methadone maintenance treatment center in the neighborhood. The best way for you to assist the group is to help them first to

(A) get to know each other on an informal basis
(B) understand the overall background of the drug problem and the need for such a facility in the community
(C) concentrate on all the issues until they iron out conflicting viewpoints
(D) discuss the pros and cons briefly, take a vote, and accept the decision of the majority.

32. Of the following, the most important aim of the community development process is primarily to strengthen the

(A) long-established social and political pattern of relationships
(B) influence of dominant ethnic and religious groups
(C) long-standing power of traditional central government
(D) positive impulses of people working toward a common goal.

33. One method of influencing human behavior is based upon an optimistic belief in human potential for development and betterment. Workers in the human services who apply this method expect that it will

(A) awaken initiative in clients
(B) demand a pre-chosen response from clients
(C) give clients a spirit of competition
(D) get clients to accept new ideas.

34. In the opinion of experts, the community development process is most effective when

(A) final decisions are made solely by the community development expediters
(B) a firm plan is made after a project gets under way
(C) decisions are left in the hands of community people
(D) militant factions are permitted to take a firm stand.

35. Of the following, the most significant indication that an organizer of a community group has done an effective job would be a situation where the group

(A) continues to grow in size and strength after the organizer has departed
(B) disperses after the organizer has departed because it has fulfilled its purpose
(C) attains its goals only under the organizer's guidance
(D) has a warm and friendly relationship with the organizer.

36. The main purpose of group discussion of community issues by local residents is to

(A) present a predetermined point of view
(B) provide an outlet for release of the participants' aggressions
(C) consider and work through common problems
(D) improve relationships among participants.

37. Of the following, the most important reason why the community development worker in a disadvantaged community of a major metropolis should seek to understand the motivations of the local residents is that he will be more capable of assisting them in developing

(A) self-help activities
(B) projects which will get publicity
(C) an overall master plan
(D) projects which do not require technical assistance.

38. At certain times, there is a tendency for community groups to disregard democratic procedures in making decisions, particularly in a situation where

(A) action depends on availability of community services
(B) the executive board makes the decision
(C) there is need for speedy action
(D) there is no sound basis for the decision.

39. The employment of residents of poverty areas with little or no educational qualifications to assist professional staff members in working with clients of human services agencies is generally considered

(A) advisable, mainly because local paraprofessionals can be expected to bridge the gap between the middle class professional worker and lower class recipients of service
(B) inadvisable, mainly because the employment of workers who are not professionals will lower the professional standards of the agency's staff
(C) advisable, mainly because employment of paraprofessional local residents will save agency funds
(D) inadvisable, mainly because clients will receive services of poorer quality than services provided by professional workers.

40. The social work activist who was a leader in the movement to achieve welfare reform by organizing welfare clients and encouraging the poor to demand their legal rights to public assistance is

(A) Saul Alinsky
(B) Richard Cloward
(C) Bertram Beck
(D) Jesse Gray.

GO ON TO NEXT PAGE

Answer questions 41 through 46 solely on the basis of the following passage.

Too often in the past society has accepted the existing social welfare programs, preferring to tinker with refinements when fundamental reform was in order. It has been a demeaning, degrading welfare system in which the instrument of government was wrongfully and ineptly used. It has been a system which has only alienated those forced to benefit from it and demoralized those who had to administer it at the level where the pain was clearly visible.

There is a need to put this nation on a course in which cash benefits, providing a basic level of support, are conferred in such a way as to intrude as little as possible into privacy and self-respect. It is difficult to define a basic level of support, no matter how high or low it might be set. In the end, however, the decision is not determined so much by how much is truly adequate for a family to meet all of its needs, but by the resources available to carry out the promise. That may be a harsh fact of life but it is also just that - a fact of life.

41. Of the following, the most suitable title for the foregoing passage would be

(A) The Need for Government Control of Welfare
(B) Determining the Basic Level of Support
(C) The Need for Welfare Reform
(D) The Elimination of Welfare Programs.

42. In this passage, the author's greatest criticism of the welfare system is that it is too

(A) disrespectful of recipients
(B) expensive to administer
(C) limited by regulations
(D) widespread in application.

43. According to the passage, the basic level of support is actually determined by

(A) how much is required for a family to meet all of its needs
(B) the age of the recipients
(C) how difficult it is to administer the program
(D) the economic resources of the nation.

44. In this passage, the author does not argue for

(A) a work incentive system
(B) a basic level of support
(C) cash benefits
(D) the privacy of recipients.

45. As used in the foregoing passage, the underlined word demeaning means, most nearly,

(A) ineffective (B) expensive (C) overburdened (D) humiliating.

46. As used in the foregoing passage, the underlined word ineptly means, most nearly,

(A) foolishly (B) unsuccessfully (C) unskillfully (D) unhappily.

Exhibit N-3 Annexed to Defendants' Stipulated Facts

Answer questions 47 through 50 solely on the basis of the following paragraph.

The unemployment rate, which counts those unemployed in the sense that they are actively looking for work and unable to find it, gives a relatively superficial index of economic conditions in a community. A better index is the subemployment rate which includes the unemployment rate and also includes those working part-time while they are trying to get full-time work; those heads of households under 65 years of age who earn less than $60 per week working full-time, and those individuals under 65 who are not heads of households and earn less than $56 per week in a full-time job; and an estimate of the males 'not counted," which is a very real concern in ghetto areas.

47. Of the following, the most suitable title for the foregoing paragraph would be

(A) Employment in the United States
(B) Part-time Workers and the Economy
(C) The Labor Market and the Community
(D) Two Indicators of Economic Conditions.

48. On the basis of the paragraph, which of the following statements is correct?

(A) The unemployment rate includes everyone who is not fully employed.
(B) The subemployment rate is higher than the unemployment rate.
(C) The unemployment rate gives a more complete picture of the economic situation than the subemployment rate.
(D) The subemployment rate indicates how many part-time workers are dissatisfied with the number of hours they work per week.

49. As used in the foregoing paragraph, the underlined word superficial means most nearly

(A) exaggerated (B) official (C) surface (D) current.

50. According to the paragraph, which of the following is included in the subemployment rate?

(A) Everyone who is unemployed.
(B) All part-time workers.
(C) Everyone under 65 who earns less than $56 per week in a full-time job.
(D) All heads of households who earn less than $60 per week in a full-time job.

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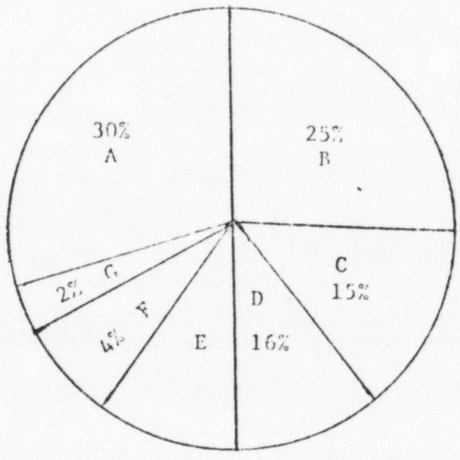
Exhibit N-3 Annexed to Defendants' Stipulated Facts

Answer questions 51 through 55 solely on the basis of the diagram presented below.

HOW THE INNER-CITY FAMILY IN URBANVILLE SPENDS ITS MONEY



A. Food

B. Shelter

C. Clothing

D. Household Operation

E. Medical Care

F. Transportation

G. Miscellaneous

51. According to the diagram, the percentage spent on medical care is

(A) 7% (B) 8% (C) 16% (D) 18%

52. According to the diagram, the total percentage spent on food, shelter, and clothing is

(A) 55% (B) 60% (C) 70% (D) 75%

53. In a typical period, if the family spent $30 on transportation how much did it spent on household operation?

(A) $120 (B) $192 (C) $300 (D) $480

54. If the family income is $125 a week, how much does it spend on transportation each year?

(A) $60 (B) $260 (C) $600 (D) $2,600

55. Assume that the annual income of a family was $5,400 for several years. Last year, the income went up 5%, and the family then tripled the typical percentage for household operation. The amount spent on this item last year was most nearly

(A) $891 (B) $1,134 (C) $1,296 (D) $2,721

Exhibit N-3 Annexed to Defendants' Stipulated Facts

Answer questions 56 through 60 solely on the basis of the table presented below.

AFDC Family Members in Urbanville

Referred to and Enrolled in WIN Program, 1969-1971

	Referred		Enrolled	
Family Member	1969	1971	1969	1971
Mother	1,091	1,306	730	877
Father	743	950	520	731
Child, age 16 and over	170	222	150	184

56. According to the table, how many AFDC family members were referred to WIN in 1971?

(A) 1,792 (B) 2,004 (C) 2,388 (D) 2,478

57. According to the table, the number of AFDC children, 16 and over, who were enrolled in WIN in 1971, was greater than the number enrolled in 1969 by

(A) 12 (B) 34 (C) 38 (D) 52

58. According to the table, the number of AFDC mothers who were enrolled in 1971 increased over the number enrolled in 1969 most nearly by

(A) 20% (B) 32% (C) 54% (D) 83%

59. In 1972, if the number of AFDC mothers referred to WIN increases 5% over 1971, the number of fathers referred increases 8% over 1971, and the number of children referred increases 5% over 1971, the total number of AFDC family members that will be referred in 1972 is most nearly

(A) 1424 (B) 1524 (C) 3130 (D) 3990

60. According to the table, the percentage of AFDC fathers not enrolled in WIN in 1971 of the number referred that year is most nearly

(A) 23% (B) 25% (C) 71% (D) 77%

61. The one of the following which accounts for the largest portion of the budget of the Human Resources Administration is

(A) personnel and support services
(B) public assistance and medicaid
(C) services to children and youth
(D) community organization and development.

62. According to the latest statistics published by the U.S. Department of Health, Education and Welfare, the state which spent the largest amount of money per person for public assistance is

(A) California (B) Massachusetts (C) Pennsylvania (D) New York.

63. According to the most recent U.S. Census Bureau Report, the group living in New York City which has the lowest income level is the

(A) Blacks (B) Puerto Ricans (C) Dominicans (D) Haitians.

64. The group that contains the largest number of individuals receiving public assistance is:

(A) children under working age
(B) unemployed heads of families
(C) the aged, disabled and blind
(D) unemployed single persons.

65. A major difficulty faced by new arrivals to cities since 1950, which did not exist for earlier European immigrants, is the fact that the majority of present-day arrivals

(A) must forfeit their native culture patterns
(B) have an obviously darker skin color than most long-time residents
(C) have little education
(D) have few occupational skills.

66. Generally speaking, low-income persons do not make maximum use of opportunities and services available to them, mainly because

(A) most paraprofessional workers, while sincere in the desire to serve, are unable to reach the hard core
(B) much of the routine paperwork in public assistance programs is now assigned to paraprofessional workers
(C) they have become increasingly self-reliant and prefer to cope with their problems without help
(D) they lack the confidence and know-how necessary to make their needs known to the proper persons or agencies.

67. The one of the following problems which has most recently become a serious concern of the Youth Services Agency is the

(A) increasing high school drop-out rate
(B) resurgence of fighting youth gangs
(C) spread of youth narcotics addiction
(D) lack of recreation programs.

68. Of the following, the most recent development with regard to welfare recipients is

(A) introduction of the declaration of need instead of an investigation of eligibility
(B) a major emphasis on employment programs
(C) increased use of casework therapy and psychiatric counselling
(D) acceptance of narcotics addicts for home relief.

69. According to a recent decision by a Federal court, regular reporting at State Employment Service offices to pick up checks or accept work can no longer be required of recipients of

(A) Aid to the Disabled
(B) Home Relief
(C) Aid to Dependent Children
(D) Medicaid

70. A basic objective of the proposal for revenue sharing currently under consideration by the U.S. Congress is to provide

(A) state and local governments with new sources of revenue from the federal government and greater control over how this revenue is spent
(B) the federal government with greater control over spending of certain federally-raised tax revenues
(C) safeguards against improper allocation of funds by state and local officials and incentives to states for reporting violations by local government
(D) a method of sharing federal revenue with the states and localities in accordance with their required expenditures for public assistance and social welfare services.

GO ON TO NEXT PAGE

71. The component of the Human Resources Administration which sets policy for the administration, coordination and allocation of funds for community action programs is the

(A) Community Development Agency
(B) Department of Social Services
(C) Council on Poverty
(D) Manpower and Career Development Agency

72. The policies of the Council Against Poverty are carried out by the

(A) Community Development Agency
(B) Manpower and Career Development Agency
(C) Department of Social Services
(D) Neighborhood Manpower Service Centers.

73. The current reorganization of the Human Resources Administration has established the unit of organization for provisions of services at the neighborhood level as the

(A) designated poverty area
(B) human resources district
(C) catchment area
(D) census tract.

74. The Child Development Commission recently established by the Agency for Child Development can best be described as a group comprised of

(A) professionals in child psychology and early childhood education who will consult with Agency staff members on policy and programs
(B) parents, community organizations and concerned citizens, who will help the Agency determine, review, and modify policies and guidelines for child-care services
(C) child-care experts who will provide technical assistance to private groups that want to develop early childhood centers
(D) professionals who will offer health and nutrition consultation, and a variety of support and referral services for children and parents.

75. The basic purpose of the new office of Community Social Services in the Department of Social Services is to

(A) help local community leaders establish liaison with private social service agencies in their communities
(B) determine the social service needs of each community and provide services in accordance with these needs
(C) provide information and referral to all HRA services existing in a particular community and to services provided by other City agencies and private organizations
(D) assume responsibility for a variety of social services mandated by Federal and State regulations.

76. The Social Service Exchange is correctly described as a

(A) recruitment center for the training and placement of volunteers for social and health agencies
(B) center which maintains a central index of case records of families and individuals known to social and health agencies
(C) center which provides information about and makes referrals to social and health agencies and proprietary nursing homes
(D) confidential advisory service to help potential contributors evaluate local voluntary health and welfare agencies.

77. Which one of the following is an important purpose of the formation of the Office of Special Services for Children in the Department of Social Services?

(A) Greater programmatic integration of the protective and supportive services to children who are abused, neglected, dependent, delinquent or in need of services.
(B) More professional attention to child abuse cases and prompt court action to penalize parents of abused or neglected children.
(C) Separation of programs and facilities for children adjudged to be delinquent from special services for other dependent, abused or neglected children.
(D) Increased attention to home-finding and foster care and adoption services rather than institutional care for dependent children.

78. The one of the following which is provided by the Department of Social Services for current, former and potential public assistance recipients only is

(A) information services
(B) child welfare services
(C) referral services
(D) homemaker services.

79. A major goal of the Department of Social Services which is part of the current reorganization and the separation of income maintenance from social services is to

(A) limit the provision of public social services to those New Yorkers who are eligible for public assistance
(B) make public social services available to all New Yorkers, whether or not they require financial assistance
(C) refer clients who require social services to private agencies wherever possible
(D) emphasize casework treatment and referral of clients for psychiatric services rather than programs to effect environmental change.

80. Of the following, the main functions of the Manpower and Career Development Agency (MCDA) of the Human Resources Administration are to

(A) train the unskilled, upgrade existing skills, develop job opportunities, and place newly-trained people in jobs
(B) operate manpower, recruitment and testing centers under contract with private organizations
(C) provide remedial education and follow-up for disadvantaged potential college students and vocational testing and counselling for veterans and ex addicts
(D) provide job development, interviewing and placement, and manpower research services.

ANSWER SHEET COLLECTION: You may take the question booklet with you. When you have completed the test, remain seated and summon the monitor. The monitor will pick up your answer sheet. Leave the building quickly and quietly. You should make a note of your application number and include this number in any future correspondence with the Department of Personnel with respect to this examination.

KEY ANSWERS AND PROTESTS: The proposed key answers to this test will be posted on the Official Notices Bulletin Board of the Application Section of the Department of Personnel, 49 Thomas Street, New York, N.Y., beginning 10/25/72 for a period of three days. Candidates who wish to file protests against the proposed key answers must submit in writing such protests together with their reasons for such protests. Such protests must be postmarked not later than 11/15/72, and must contain the candidate's application number. Protests should be addressed to the Department of Personnel, 55 Thomas Street, New York N.Y. 10013, with the examination title written on the face of the envelope. Protests postmarked later than 11/15/72 will not be considered.

Protests should be clear and legible, preferably typewritten. Each protest must begin on a separate page and state the number of the question being protested. Protests should begin by indicating which answer the candidate considers correct, and should present reasoned arguments and clearly identify any quoted sources or authorities. Each page must be signed by the candidate and state his address. Only protests submitted by individual candidates will be considered.

After the Department of Personnel has considered all protests, properly filed, it will make a final determination thereon and will thereafter post the final key on the Official Notices Bulletin Board of the Application Section of the Department of Personnel for a period of three days. Such posting constitutes official public notice by the Department of Personnel to all candidates of the final determination in this connection.

The Department of Personnel, in establishing key answers to this test, reserves the right to determine which of the answers listed for each question is to be deemed and accredited as acceptable, and whether more than one of the answers listed for each question is to be deemed acceptable and accredited as such. The Department further reserves the right to cancel and annul any question whenever, upon inquiry, it deems that none of the listed answers thereto can properly be considered acceptable.

Please do not telephone the Department of Personnel requesting information as to the progress of the rating of this examination. Such information will not be available to candidates. All candidates in this examination will be notified individually by mail of the rating they receive when the rating of all candidates in the examination has been completed. Notify this department promptly in writing of any change in your address to insure prompt delivery of such notice.

EXHIBIT N-4 ANNEXED TO
DEFENDANTS' STIPULATED FACTS

[illegible]

City of New York
Department of Personnel

EXAMINATION NO. 1097 - OPEN COMPETITIVE (O.C.) EXAMINATION FOR
HUMAN RESOURCES SPECIALIST

EXAMINATION NO. 1095 - OPEN COMPETITIVE (O.C.) EXAMINATION FOR
HUMAN RESOURCES SPECIALIST (PROFESSIONAL DEVELOPMENT & TRAINING)

Date: October 14, 1972 Total Time Allowed: 2½ hours

Written Tests - Weight 100, 70% required

GENERAL INSTRUCTIONS

Fill in your application number, roll number, and seat number at the top of this page.

BELLS: First Bell: Test booklet given out. READ THIS PAGE ONLY.
Second Bell: Turn the page and begin work.
Third Bell: End of test. Stop and work. This bell is rung 2½ hours after the second bell. If you finish before, raise your hand to let the monitor know.

TEST BOOKLET: This test booklet has both tests and there should be 12 pages. All questions are of equal weight. Check your test booklet after the second bell to be sure it has all the pages and is not defective.

ANSWER THE QUESTIONS AS INDICATED BELOW:

IF YOU ARE TAKING ONLY EXAM. NO. 1097 - O.C. HUMAN RESOURCES SPECIALIST:
ANSWER QUESTIONS 1-80

IF YOU ARE TAKING ONLY EXAM. NO. 1095 - O.C. HUMAN RESOURCES SPECIALIST (PDT):
ANSWER QUESTIONS 1-70 AND 81-90

OR: If you are taking two or more tests follow the special instructions that you have been given concerning questions to answer and time allowed.

You must hand in your test booklet, answer sheet, and all scrap paper after you finish. You may take nothing from the room with you except the "Candidate's Personal Record of Answers" sheet, on which you may make a record of your answers for future reference.

WARNING: Smoking is NOT allowed. You will be disqualified if you copy answers from anyone or use books or notes.

It is against the law to take the test for somebody else or to let somebody else take the test for you.

This test booklet is the property of the Department of Personnel and you must turn it in at the end of the test. It is worth more than $250. You will be subject to penalty if you do not turn it in.

After the test starts, nobody can leave till after 10:30 a.m. Nobody can come in after 10:30 a.m. If you want to drop out of the test and do not want to have your answers rated, write "I withdraw" on your answer sheet and sign your name.

DO NOT TURN THE PAGE UNTIL THE SECOND BELL IS RUNG

Exhibit N-4 Annexed to Defendants' Stipulated Facts

[illegible]

[illegible] Answer Sheet [illegible]

For each question, select [illegible] you [illegible] the [illegible] are [illegible] and note the capital letter preceding your selected answer.

Then, on the official answer sheet, find the row numbered the same as the question, and record your answer by [illegible] the space between the dotted lines immediately to the right of the capital letter representing your selected answer, using a No. 2 pencil.

When recording your answer with a No. 2 pencil, fill in the entire space between the dotted lines and the full length of the lines by pressing fairly on the pencil and using several strokes.

IF YOU WISH TO CHANGE AN ANSWER, ERASE THE OLD ANSWER COMPLETELY. Do not cross it out. Then record your new answer in the proper space.

Do not make any marks except your answers. More than one answer to a question or improperly erased answers or stray marks caused by resting the pencil on the paper may be counted as wrong answers.

Use pen (blue or black ink) for filling in the headings on your answer sheet but use only the No. 2 pencil for recording your answers.

Do not fold the answer sheet or damage the edges because the rating is done by machine.

Since there are only 4 answers listed for each question, the spaces to the right of the letter D on the answer sheet are not used for this examination.

To help you understand the procedure, the following sample item is given:

SAMPLE Q: The sum of 5 and 3 is

(A) 2 (B) 8 (C) 9 (D) 11.

The sum of 5 and 3 is 8, so that the acceptable answer is shown thus on your answer sheet:

SAMPLE Q: A ===== B ▬ ▪ C ===== D =====

CONTINUE ON

FOLLOWING

PAGE

Exhibit N-4 Annexed to Defendants' Stipulated Facts

EXAMINATION NO. 1047

O.C. WIRE ENGINEERING SPECIALIST

Held October 14, 1972

Following are the key answers to be used for rating of candidates' papers in this test. These keys are published at once for information only. NO PROTESTS OR APPEALS WILL BE ACCEPTED AT THIS TIME. Protests or appeals may be made only after official notification of test results.

1. C	28. D	55. B
2. B	29. A	56. D
3. A	30. B	57. B
4. C	31. B	58. A
5. B	32. D	59. C
6. C	33. A	60. A
7. A	34. C	61. B
8. B	35. A	62. D
9. B	36. C	63. B
10. B	37. A	64. A
11. C	38. C	65. B
12. C	39. A	66. D
13. C	40. B	67. B
14. A	41. C	68. B
15. B	42. A	69. C
16. B	43. D	70. A
17. C	44. A	71. B
18. C	45. D	72. D
19. B	46. C	73. B
20. D	47. D	74. D
21. B	48. B	75. B
22. D	49. C	76. C
23. A	50. C	77. B
24. C	51. B	78. A
25. A	52. C	79. A
26. A	53. A	80. D.
27. B	54. B	

Exhibit N-4 Annexed to Defendants' Stipulated Facts

EXAMINATION NO. 1025

U.S. HUMAN RESOURCES SPECIALIST
(MANPOWER DEVELOPMENT AND TRAINING)

Held October 14, 1972

Following are the key answers to be used for rating of candidates' papers in this test. These key answers are published now for information only. NO PROTESTS OR APPEALS WILL BE ACCEPTED AT THIS TIME. Protests or appeals may be made only after official notification of test results.

1. C	28. B	55. D
2. B	29. A	56. D
3. A	30. B	57. B
4. C	31. B	58. A
5. B	32. D	59. C
6. C	33. A	60. A
7. A	34. C	61. B
8. B	35. A	62. D
9. B	36. C	63. B
10. B	37. A	64. A
11. C	38. C	65. B
12. C	39. A	66. D
13. C	40. B	67. B
14. A	41. C	68. B
15. B	42. A	69. C
16. B	43. D	70. A
17. C	44. A	81. A
18. C	45. D	82. C
19. B	46. C	83. C
20. D	47. D	84. D
21. B	48. B	85. B
22. D	49. C	86. A
23. A	50. C	87. D
24. C	51. B	88. A
25. A	52. C	89. A
26. A	53. A	90. A
27. B	54. B	

Exhibit N-4 Annexed to Defendants' Stipulated Facts

1. The term "first-line supervisor" refers to the lowest level of supervision in an organization. A dilemma faced by the first-line supervisor is that he represents

(A) management
(B) labor
(C) management and labor
(D) neither management nor labor.

2. Management experts generally consider it advisable to give instructions orally, even though these instructions may later be put in writing for permanent reference. The main reason for this advice is that

(A) employees sometimes misplace written instructions
(B) explanations can be made in accordance with individual needs
(C) written instructions tend to be unclear and ambiguous
(D) employees resent being given instructions in writing.

3. Of the following, the best reason why a supervisor should not delegate a certain job to a subordinate is that

(A) he does not have any subordinate who can develop the skills needed to do the job
(B) it is easier and quicker to do it himself
(C) he knows it will be done correctly if he does it himself
(D) he enjoys doing it himself.

4. Of the following, the step which the supervisor should take first in handling a complaint from a member of his staff is to

(A) gather background information relevant to the complaint
(B) establish tentative solutions or answers to the complaint
(C) determine the nature of the complaint as clearly and as fully as possible
(D) make a determination as to whether the complaint is valid.

5. Before a supervisor delegates one of the duties which he normally performs to a member of his staff, the first thing he should do is

(A) determine the long-range purpose of the job
(B) determine exactly what tasks the job involves
(C) decide how long it takes him to do the job
(D) decide to whom he will assign the job.

6. When an employee is not sure of the intent of a policy statement, it is usually best for him to consult

(A) a fellow worker
(B) a member of the planning staff
(C) his supervisor
(D) the manual of procedures.

7. The most appropriate time for a supervisor to have a discussion with an employee who has violated an agency policy is

(A) as soon as possible after the violation has occurred
(B) after a cooling-off period has elapsed
(C) the day after the violation occurred
(D) during the next staff meeting.

8. Of the following, the most appropriate use of staff conferences is to enable the supervisor to

(A) inform staff of the latest administrative policies
(B) obtain the benefits of collective thinking about a problem
(C) let staff know that he is aware of violations of personnel policies
(D) give dissatisfied employees a chance to voice their grievances.

9. Of the following, a term used to describe how a supervisor may determine whether he is communicating effectively with his staff is called

(A) backlash
(B) feedback
(C) implementation
(D) delegation.

10. False rumors about unpleasant possibilities such as employee cutbacks can do serious damage to morale. Most rumors of this kind in large organizations and public agencies are caused by

(A) over-permissiveness and general laxity of supervision
(B) a breakdown in communication between management and employees
(C) employees who distort the facts for their own purposes
(D) newspaper articles planted by special interest groups.

11. Of the following, staff meetings are least likely to be productive when

(A) only four or five people are present
(B) the chairman conducts the meeting in a formal manner
(C) discussion is kept to a minimum
(D) private discussions are not allowed.

12. The one of the following persons who usually would be classified as belonging to middle management is the

(A) senior clerk
(B) agency head
(C) bureau director
(D) deputy commissioner.

13. Of the following, the best way for a person to develop competence as an interviewer is to

(A) attend lectures on interviewing techniques
(B) practice with employees on the job
(C) conduct interviews under the supervision of an experienced instructor
(D) attend a training course in counselling.

14. Of the following, the type of employee who would probably expect to be given the most authority to use independent judgment is the

(A) chemical engineer
(B) clerical worker
(C) bookkeeper
(D) registered nurse.

15. Assume that you are asked to study and report on employee turnover in several agency units which vary widely as to total number of employees and the number of employees involved in turnover. In order to present an accurate picture of turnover, your report should show, with regard to persons leaving, both actual numbers and

(A) central tendencies
(B) percentages
(C) raw data
(D) rounded totals.

16. Many employees tend to resist a reorganization because they feel that their status and security are threatened. Of the following, the best way to make it easier for employees to accept the changes necessitated by reorganization is to

(A) introduce many changes at the same time
(B) give them a chance to participate in evaluating proposed changes
(C) keep the changes secret until they are put into effect
(D) have staff people who have had little contact with the affected employees initiate the changes.

17. The most important reason for investigating every accident on the job is to

(A) find out who was responsible for the accident
(B) determine the organization's legal liability for the accident
(C) correct the conditions or actions which caused the accident
(D) discipline the employee who caused the accident.

18. Research studies indicate that an important difference between high-production and low-production supervisors lies in their manner of handling mistakes. When subordinates make mistakes, the high-production supervisor probably would

(A) concentrate on fixing responsibility and determining the subordinate's excuse for the mistake
(B) take over the assignment himself in order to avoid recurrence of the mistake
(C) look upon the mistake as an opportunity to provide training
(D) give the assignment to a subordinate who is not likely to repeat the mistake.

19. The use of statistical controls is generally considered to be one of management's most effective means of determining what is happening at the operating level of an agency. Of the following, statistical controls are <u>least</u> useful for

(A) furthering coordination
(B) measuring morale
(C) setting standards
(D) pinpointing responsibility.

20. A basic problem of the supervisor is how to motivate employees. One approach is to "internalize" motivation by providing opportunities for employees to derive satisfaction from the work itself. Of the following, internalized motivation would be the <u>least</u> effective approach where the employee

(A) enjoys autonomy because of the nature of the job
(B) accepts the organization's objectives
(C) makes the job his central life focus
(D) does a routine or assembly line job.

21. Of the following, an important goal of the current reorganization of the New York City Human Resources Administration is to

(A) strengthen the centralization of services at agency headquarters
(B) provide services within the neighborhoods, according to local needs
(C) equalize the distribution of responsibilities between headquarters and neighborhood offices
(D) give more authority and responsibility to neighborhood offices than to headquarters.

22. The one of the following which is not a purpose of the movement toward decentralization of New York City government is to

(A) reduce citizen alienation
(B) bolster City services
(C) respond to local needs
(D) discourage the local power structure.

23. Of the following, the most desirable way to strengthen the capacity of communities to contribute to the solution of their own problems is to

(A) encourage participation of local residents in service planning and delivery
(B) establish city-wide job training programs
(C) reduce technical assistance to local small business so that they will learn by experience
(D) make local residents accountable to government agencies for funds and services provided.

24. In organizing the residents of a disadvantaged neighborhood to develop projects for community improvement, the most effective of the following approaches is to

(A) concentrate on the group with most members
(B) devote more attention to groups which have vested interests
(C) try to include all groups
(D) give special consideration to official groups.

25. The one of the following which has been the most common problem which occurs when attempts are made to obtain community participation in a project such as a neighborhood improvement program is

(A) domination by an aggressive but unrepresentative group
(B) public opposition by representatives of government agencies
(C) fragmentation and disruption of community services
(D) serious deterioration in the quality of services.

26. Of the following, the most important aim of the community organizer in his early contacts with a community group should be to

(A) build a core of common interests
(B) establish himself as a forceful leader who can make decisions
(C) inform the group of its legal rights
(D) curb discussion of opposing viewpoints in order to develop harmonious relations.

27. The one of the following which is the best method of encouraging neighborhood people to attend a community meeting is to

(A) send out notices at least a week in advance
(B) set up an agenda that deals with issues of serious local concern
(C) invite a prominent public figure to address the meeting
(D) send invitations to community people with similar viewpoints on the problem to be discussed.

28. A basic difference between pure experimental research and action research is that experimental research is primarily concerned with the analysis of data for scientific or technological generalization, while action research is

(A) based on the results of trial and error
(B) designed to effect improvement in an on-going process
(C) intuitive rather than scientific in nature
(D) primarily concerned with the analysis of data for universal generalization.

29. Assume that a community worker is assigned to organize a client group to participate in planning for services they particularly need. Of the following, it would be least important for the organizer to become familiar with the

(A) local store owners
(B) neighborhood resources
(C) potential leaders
(D) informal leaders.

30. Of the following, the factor which is most important in encouraging a high level of local participation in community projects is the

(A) degree of sophistication of the local people
(B) attitudes of the community development workers towards the local people
(C) amount of money available for training
(D) amount of time available for stimulation of community interest.

31. Assume that you are the discussion leader of a meeting of a group of residents of a poverty area, many of whom are against a proposal to locate a methadone maintenance treatment center in the neighborhood. The best way for you to assist the group is to help them first to

(A) get to know each other on an informal basis
(B) understand the overall background of the drug problem and the need for such a facility in the community
(C) concentrate on all the issues until they iron out conflicting viewpoints
(D) discuss the pros and cons briefly, take a vote, and accept the decision of the majority.

32. Of the following, the most important aim of the community development process is primarily to strengthen the

(A) long-established social and political pattern of relationships
(B) influence of dominant ethnic and religious groups
(C) long-standing power of traditional central government
(D) positive impulses of people working toward a common goal.

33. One method of influencing human behavior is based upon an optimistic belief in human potential for development and betterment. Workers in the human services who apply this method expect that it will

(A) awaken initiative in clients
(B) demand a pre-chosen response from clients
(C) give clients a spirit of competition
(D) get clients to accept new ideas.

34. In the opinion of experts, the community development process is most effective when

(A) final decisions are made solely by the community development expediters
(B) a firm plan is made after a project gets under way
(C) decisions are left in the hands of community people
(D) militant factions are permitted to take a firm stand.

35. Of the following, the most significant indication that an organizer of a community group has done an effective job would be a situation where the group

(A) continues to grow in size and strength after the organizer has departed
(B) disperses after the organizer has departed because it has fulfilled its purpose
(C) attains its goals only under the organizer's guidance
(D) has a warm and friendly relationship with the organizer.

36. The main purpose of group discussion of community issues by local residents is to

(A) present a predetermined point of view
(B) provide an outlet for release of the participants' aggressions
(C) consider and work through common problems
(D) improve relationships among participants.

37. Of the following, the most important reason why the community development worker in a disadvantaged community of a major metropolis should seek to understand the motivations of the local residents is that he will be more capable of assisting them in developing

(A) self-help activities
(B) projects which will get publicity
(C) an overall master plan
(D) projects which do not require technical assistance.

38. At certain times, there is a tendency for community groups to disregard democratic procedures in making decisions, particularly in a situation where

(A) action depends on availability of community services
(B) the executive board makes the decision
(C) there is need for speedy action
(D) there is no sound basis for the decision.

39. The employment of residents of poverty areas with little or no educational qualifications to assist professional staff members in working with clients of human services agencies is generally considered

(A) advisable, mainly because local paraprofessionals can be expected to bridge the gap between the middle class professional worker and lower class recipients of service
(B) inadvisable, mainly because the employment of workers who are not professionals will lower the professional standards of the agency's staff
(C) advisable, mainly because employment of paraprofessional local residents will save agency funds
(D) inadvisable, mainly because clients will receive services of poorer quality than services provided by professional workers.

40. The social work activist who was a leader in the movement to achieve welfare reform by organizing welfare clients and encouraging the poor to demand their legal rights to public assistance is

(A) Saul Alinsky
(B) Richard Cloward
(C) Bertram Beck
(D) Jesse Gray.

GO ON TO NEXT PAGE

Exhibit N-4 Annexed to Defendants' Stipulated Facts

Answer questions 41 through 46 solely on the basis of the following passage.

Too often in the past society has accepted the existing social welfare programs, preferring to tinker with refinements when fundamental reform was in order. It has been a demeaning, degrading welfare system in which the instrument of government was wrongfully and ineptly used. It has been a system which has only alienated those forced to benefit from it and demoralized those who had to administer it at the level where the pain was clearly visible.

There is a need to put this nation on a course in which cash benefits, providing a basic level of support, are conferred in such a way as to intrude as little as possible into privacy and self-respect. It is difficult to define a basic level of support, no matter how high or low it might be set. In the end, however, the decision is not determined so much by how much is truly adequate for a family to meet all of its needs, but by the resources available to carry out the promise. That may be a harsh fact of life but it is also just that - a fact of life.

41. Of the following, the most suitable title for the foregoing passage would be

(A) The Need for Government Control of Welfare
(B) Determining the Basic Level of Support
(C) The Need for Welfare Reform
(D) The Elimination of Welfare Programs.

42. In this passage, the author's greatest criticism of the welfare system is that it is too

(A) disrespectful of recipients
(B) expensive to administer
(C) limited by regulations
(D) widespread in application.

43. According to the passage, the basic level of support is actually determined by

(A) how much is required for a family to meet all of its needs
(B) the age of the recipients
(C) how difficult it is to administer the program
(D) the economic resources of the nation.

44. In this passage, the author does not argue for

(A) a work incentive system
(B) a basic level of support
(C) cash benefits
(D) the privacy of recipients.

45. As used in the foregoing passage, the underlined word demeaning means, most nearly,

(A) ineffective (B) expensive (C) overburdened (D) humiliating.

46. As used in the foregoing passage, the underlined word ineptly means, most nearly,

(A) foolishly (B) unsuccessfully (C) unskillfully (D) unhappily.

Exhibit N-4 Annexed to Defendants' Stipulated Facts

Answer questions 47 through 50 solely on the basis of the following paragraph.

The unemployment rate, which counts those unemployed in the sense that they are actively looking for work and unable to find it, gives a relatively superficial index of economic conditions in a community. A better index is the subemployment rate which includes the unemployment rate and also includes those working part-time while they are trying to get full-time work; those heads of households under 65 years of age who earn less than $60 per week working full-time, and those individuals under 65 who are not heads of households and earn less than $56 per week in a full-time job; and an estimate of the males 'not counted," which is a very real concern in ghetto areas.

47. Of the following, the most suitable title for the foregoing paragraph would be

(A) Employment in the United States
(B) Part-time Workers and the Economy
(C) The Labor Market and the Community
(D) Two Indicators of Economic Conditions.

48. On the basis of the paragraph, which of the following statements is correct?

(A) The unemployment rate includes everyone who is not fully employed.
(B) The subemployment rate is higher than the unemployment rate.
(C) The unemployment rate gives a more complete picture of the economic situation than the subemployment rate.
(D) The subemployment rate indicates how many part-time workers are dissatisfied with the number of hours they work per week.

49. As used in the foregoing paragraph, the underlined word superficial means most nearly

(A) exaggerated (B) official (C) surface (D) current.

50. According to the paragraph, which of the following is included in the subemployment rate?

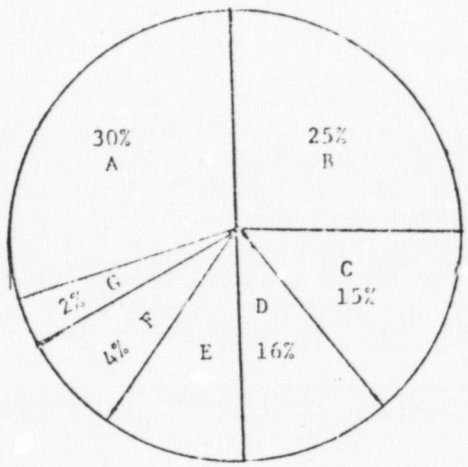
(A) Everyone who is unemployed.
(B) All part-time workers.
(C) Everyone under 65 who earns less than $56 per week in a full-time job.
(D) All heads of households who earn less than $60 per week in a full-time job.

GO ON TO NEXT PAGE

Exhibit N-4 Annexed to Defendants' Stipulated Facts

Answer questions 51 through 55 solely on the basis of the diagram presented below.

HOW THE INNER-CITY FAMILY IN URBANVILLE SPENDS ITS MONEY



A. Food

B. Shelter

C. Clothing

D. Household Operation

E. Medical Care

F. Transportation

G. Miscellaneous

51. According to the diagram, the percentage spent on medical care is

(A) 7% (B) 8% (C) 16% (D) 18%

52. According to the diagram, the total percentage spent on food, shelter, and clothing is

(A) 55% (B) 60% (C) 70% (D) 75%

53. In a typical period, if the family spent $30 on transportation how much did it spent on household operation?

(A) $120 (B) $192 (C) $300 (D) $480

54. If the family income is $125 a week, how much does it spend on transportation each year?

(A) $60 (B) $260 (C) $600 (D) $2,600

55. Assume that the annual income of a family was $5,400 for several years. Last year, the income went up 5%, and the family then tripled the typical percentage for household operation. The amount spent on this item last year was most nearly

(A) $891 (B) $1,134 (C) $1,296 (D) $2,721

Exhibit N-4 Annexed to Defendants' Stipulated Facts

Answer questions 56 through 60 solely on the basis of the table presented below.

AFDC Family Members in Urbanville

Referred to and Enrolled in WIN Program, 1969-1971

	Referred		Enrolled	
Family Member	1969	1971	1969	1971
Mother	1,091	1,396	730	877
Father	743	950	520	731
Child, age 16 and over	170	222	150	184

56. According to the table, how many AFDC family members were referred to WIN in 1971?

(A) 1,792 (B) 2,004 (C) 2,388 (D) 2,478

57. According to the table, the number of AFDC children, 16 and over, who were enrolled in WIN in 1971, was greater than the number enrolled in 1969 by

(A) 12 (B) 34 (C) 38 (D) 52

58. According to the table, the number of AFDC mothers who were enrolled in 1971 increased over the number enrolled in 1969 most nearly by

(A) 20% (B) 32% (C) 54% (D) 83%

59. In 1972, if the number of AFDC mothers referred to WIN increases 5% over 1971, the number of fathers referred increases 8% over 1971, and the number of children referred increases 5% over 1971, the total number of AFDC family members that will be referred in 1972 is most nearly

(A) 1424 (B) 1524 (C) 3130 (D) 3990

60. According to the table, the percentage of AFDC fathers not enrolled in WIN in 1971 of the number referred that year is most nearly

(A) 23% (B) 25% (C) 31% (D) 77%

61. The one of the following which accounts for the largest portion of the budget of the Human Resources Administration is

(A) personnel and support services
(B) public assistance and medicaid
(C) services to children and youth
(D) community organization and development.

62. According to the latest statistics published by the U.S. Department of Health, Education and Welfare, the state which spent the largest amount of money per person for public assistance is

(A) California (B) Massachusetts (C) Pennsylvania (D) New York.

63. According to the most recent U.S. Census Bureau Report, the group living in New York City which has the lowest income level is the

(A) Blacks (B) Puerto Ricans (C) Dominicans (D) Haitians.

64. The group that contains the largest number of individuals receiving public assistance is:

(A) children under working age
(B) unemployed heads of families
(C) the aged, disabled and blind
(D) unemployed single persons.

65. A major difficulty faced by new arrivals to cities since 1950, which did not exist for earlier European immigrants, is the fact that the majority of present-day arrivals

(A) must forfeit their native culture patterns
(B) have an obviously darker skin color than most long-time residents
(C) have little education
(D) have few occupational skills.

66. Generally speaking, low-income persons do not make maximum use of opportunities and services available to them, mainly because

(A) most paraprofessional workers, while sincere in the desire to serve, are unable to reach the hard core
(B) much of the routine paperwork in public assistance programs is now assigned to paraprofessional workers
(C) they have become increasingly self-reliant and prefer to cope with their problems without help
(D) they lack the confidence and know-how necessary to make their needs known to the proper persons or agencies.

67. The one of the following problems which has most recently become a serious concern of the Youth Services Agency is the

(A) increasing high school drop-out rate
(B) resurgence of fighting youth gangs
(C) spread of youth narcotics addiction
(D) lack of recreation programs.

68. Of the following, the most recent development with regard to welfare recipients is

(A) introduction of the declaration of need instead of an investigation of eligibility
(B) a major emphasis on employment programs
(C) increased use of casework therapy and psychiatric counselling
(D) acceptance of narcotics addicts for home relief.

69. According to a recent decision by a Federal court, regular reporting at State Employment Service offices to pick up checks or accept work can no longer be required of recipients of

(A) Aid to the Disabled
(B) Home Relief
(C) Aid to Dependent Children
(D) Medicaid

70. A basic objective of the proposal for revenue sharing currently under consideration by the U.S. Congress is to provide

(A) state and local governments with new sources of revenue from the federal government and greater control over how this revenue is spent
(B) the federal government with greater control over spending of certain federally-raised tax revenues
(C) safeguards against improper allocation of funds by state and local officials and incentives to states for reporting violations by local government
(D) a method of sharing federal revenue with the states and localities in accordance with their required expenditures for public assistance and social welfare services.

GO ON TO NEXT PAGE

Exhibit N-4 Annexed to Defendants' Stipulated Facts

71. The federally-funded program which was a forerunner of the concept of parent involvement in day care of pre-school-age children is

(A) The Office of Educational Development
(B) Head Start
(C) SEEK
(D) The Office of Family Day Care.

72. The agency called Youth-in-Action is based in the following poverty area:

(A) South Jamaica
(B) South Bronx
(C) East New York
(D) Bedford-Stuyvesant.

73. The agency called HARYOU-ACT is based in the following poverty area:

(A) Williamsburg
(B) Central Harlem
(C) East Harlem
(D) Lower East Side.

74. Of the following, the organization which has waged an aggressive campaign to inform the poor of their legal rights is the

(A) Legal Aid Society
(B) National Welfare Rights Organization
(C) American Civil Liberties Union
(D) National Urban League.

75. Which one of the following programs is designed to meet the need for paraprofessionals in government agencies and institutions?

(A) Concentrated Employment Program
(B) Public Service Careers Program
(C) Opportunities Industrialization Center
(D) Work Incentive Program.

76. The popular name for the program authorized by Title I of the Demonstration Cities and Metropolitan Development Act of 1966 is the Federal

(A) Anti-Poverty Program
(B) Manpower Development and Training Program
(C) Model Cities Program
(D) Revenue Sharing Program.

77. An agency which currently sponsors supportive programs to rehabilitate former narcotics addicts through full-time paid employment in such fields as park maintenance, rodent control, and messenger services is the

(A) Volunteer Prison League
(B) Vera Institute of Justice
(C) Judicial Council
(D) Daytop Village.

78. Project Manhood Foundation can best be described as an organization which provides

(A) manpower services for former convicts aged 16 and over
(B) supportive counselling for former narcotics addicts
(C) remedial education and vocational training for juvenile offenders
(D) skills training for the disabled.

79. The correct description of the functions of ASPIRA is that the organization provides disadvantaged youth of Puerto Rican background with

(A) educational counselling, financial assistance and career planning services
(B) vocational counselling and training in the skilled trades
(C) remedial, rehabilitative and recreational services
(D) remedial education and vocational placement services.

80. Which of the following is a federal residential program that offers work experience, education, and skills training for disadvantaged youth from 16 to 21 years of age?

(A) Training Resources for Youth
(B) Youth Employment Service
(C) Vocational Foundation Incorporated
(D) Job Corps.

Exhibit N-4 Annexed to Defendants' Stipulated Facts

81. Of the following, the basic advantage of programs designed to combat unemployment by providing federally subsidized regular paid jobs in public agencies is that such a program provides

(A) an opportunity for the participants to develop and improve skills and prepare themselves for non-subsidized jobs when the economic situation improves
(B) the participants with job security and fringe benefits which are not available in private industry
(C) public agencies with highly motivated workers at low cost
(D) public agencies with funds to fill vacancies which would otherwise remain unfilled because of budget restrictions.

82. Assume that one of your job functions is to help develop employment opportunities for clients of the Regional Manpower Center. The one of the following which would be most useful in helping to identify likely industries for placement would be information on the

(A) employers' attitudes
(B) educational level of those employed in the industries
(C) nature of job vacancies
(D) salaries of the clients before they became unemployed.

83. The agency whose overall operation is most similar to that of the Manpower and Career Development Agency is the

(A) Office of Labor Relations
(B) Division of Vocational Rehabilitation
(C) State Employment Service
(D) Youth Services Agency.

84. A standard reference source for manpower specialists developed by the U.S. Department of Labor is known as the

(A) Mental Measurement Yearbook
(B) Public Personnel Review
(C) Classification and Compensation Schedule
(D) Dictionary of Occupational Titles

85. The program which offers manpower services such as job development, placement and referral to training for former convicts, including parolees, aged 16 and over, is called

(A) Opportunities Industrialization Center, Inc.
(B) Project Manhood Foundation
(C) Project Renewal
(D) Vocational Foundation Incorporated.

86. Of the following, the most important reason why comprehensive information on job vacancies on a nationwide basis is significant in the development of economic policy is that such information indicates

(A) the amount and character of the unfilled demand for labor
(B) possible areas of existing discrimination against minority group members
(C) the number of hard-core unemployed in a particular urban center
(D) the number of job vacancies which are filled by migrant workers.

87. Of the following manpower programs, the one which does not receive federal funds is the

(A) Job Corps
(B) Neighborhood Youth Corps
(C) Work Incentive Program
(D) Emergency Placement Program.

88. The Wonderlic Personnel Test is a widely used standardized test which aims to predict employment success. A study of an experimental group of disadvantaged youth who were successfully employed after participation in a training program showed that this group's scores on the test were considerably lower than those listed in the test manual as minimum passing scores for particular occupations. Of the following, the most appropriate conclusion that can be drawn from these results is that the

(A) test is not a valid test for the experimental group
(B) experiment was poorly conducted and should be repeated under improved conditions
(C) youths may actually be in need of additional training
(D) test is not useful in predicting on-the-job success for any group.

89. Job restructuring can provide new careers for the disadvantaged by

(A) creating entry-level positions and meaningful promotion opportunities for inexperienced persons
(B) eliminating the more difficult duties of a job
(C) lowering the educational qualifications for higher-level jobs
(D) training individuals in those aspects of a job in which they are not skilled.

90. The New York Plan is designed to provide jobs and training for minority group members in the

(A) building and construction trades
(B) garment and needle trades
(C) printing and publishing trades
(D) waterfront and warehousing trades.

Exhibit N-4 Annexed to Defendants' Stipulated Facts

ANSWER SHEET COLLECTION: You are required to hand in your question booklet, answer sheet, and all scratch paper after completing the test. Any candidate leaving the room with the question booklet or scratch paper in his possession will be disqualified. When you have completed the test, remain seated and summon the monitor. The monitor will pick up your answer sheet, question booklet, and scratch paper. Leave the building quickly and quietly. You should make a note of your application number and include this number in any future correspondence with the Department of Personnel with respect to this examination.

The Department of Personnel, in establishing the key answers to this test, reserves the right to determine which of the answers listed for each question is to be deemed and accredited as acceptable. The Department of Personnel further reserves the right to cancel and annul any question whenever, upon inquiry, it deems that none of the listed answers thereto can properly be considered acceptable.

KEY ANSWERS: The rating key for this test will be posted on the Official Notices Bulletin Board of the Application Section of the Department of Personnel, 49 Thomas Street, New York, N.Y. 10013, for a period of three days beginning October 25, 1972.

Please do not telephone the Department of Personnel requesting information as to the progress of the rating of this examination. Such information will not be available to candidates. All candidates in this examination will be notified individually by mail of the rating they receive when the rating of all candidates in the examination has been completed. Notify this Department promptly in writing of any change in your address to insure prompt delivery of such notice.

Letter of Edward O. Howard Dated September 10, 1974

COVINGTON, HOWARD, HAGOOD & HOLLAND
ATTORNEYS AT LAW
15 COLUMBUS CIRCLE, NEW YORK, N. Y. 10023

G. DONALD COVINGTON
EDWARD O. HOWARD
KENNETH D. HAGOOD
ALBERT HOLLAND
ISHMAEL LAHAB

212 265-3340
CABLE "COVINLAND, NEW YORK"

JAMES R. RHONE
COUNSEL

September 10, 1974

Honorable Morris E. Lasker
United States District Judge
United States Courthouse
Room 2903
40 Foley Square
New York, New York 10007

Re: Jones v. H.R.A. - 73 Civ. 3815
Williams v. H.R.A. - 74 Civ. 91

Dear Judge Lasker:

This letter is in response to the question raised in the above captioned actions concerning the sufficiency of plaintiffs' statistical case.

As we understand it from conversations with Mr. Arditi, the question is whether the statistics before the Court with respect to some of the challenged examinations are sufficiently complete to permit the Court properly to draw inferences and make conclusions as to discriminatory impact. Specifically, the question put to us by Mr. Arditi is whether the Court may properly infer and conclude with respect to the challenged Open Competitive Supervisory HRS examination, where the ethnic identity and pass-fail rate of 51% of the examinees is known, that the ethnic identity and pass-fail rate of the other 49% is similar. We have been advised that the Court is considering obtaining "expert" opinion on the question of whether the "sample" is sufficiently representative. The issue has been raised in defendants' reply memorandum. The Court should be advised that, to date, we have not been able to find a statistician available to deal with the question. Parenthetically, we are not sure whether it is a matter of securing one expert or more than one. More importantly, we respectfully submit that the issue of the discriminatory impact of the Open Competitive exam need not be reached.

The challenged O.C. examination is 87.5% identical to the challenged promotional supervising HRS examination. The ethnic identity of the candidates on the promotional examination is fully known. The disparity of pass-fail ratios for Whites against Blacks and Hispanics is approximately 3-1/3 to 1. (The disparity for the ethnically

COVINGTON, GRANT, HOWARD, HAGOOD & HOLLAND

identified O.C. candidates is a strikingly similar 3 to 1). As the Court is aware, appointments can be made from the O.C. list only after the promotional examination list is exhausted - the O.C. list in effect being a continuation of the promotional list. If the Court were to hold the "top" of the list, i.e., the promotional list, invalid, in that minorities were unconstitutionally excluded therefrom, it would, we submit, violate the dictates of both common sense and the law to permit appointments to be made from the "bottom" of the list, i.e., the O.C. list. Such appointments would just as effectively defeat the right of the minorities who failed the promotional list as would appointments from the promotional list itself.

If the Court wishes argument on the question or more formal papers, we will be pleased to respond. We trust, however, that the Court will accord due consideration to what is set forth herein without the necessity of additional formal proceedings.

We thank the Court for its attention to this letter.

Respectfully,

EDWARD O. HOWARD

EOH:aw

cc: Ms. P. Omansky
Ms. D. Greenberg
Mr. J. Jones
Ms. K. Ivey

Letter of Ralph Arditi Dated September 12, 1974

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
UNITED STATES COURT HOUSE
NEW YORK, N. Y. 10007

CHAMBERS OF
JUDGE MORRIS E. LASKER

September 12, 1974

Edward O. Howard, Esq.
Covington, Howard, Hagood & Holland, Esqs.
15 Columbus Circle
New York, New York 10023

Paula J. Omansky, Esq.
Assistant Corporation Counsel
Municipal Building
New York, New York 10007

Jones v. H.R.A. 73 Civ. 3815
Williams v. H.R.A. 74 Civ. 91

Dear Mr. Howard and Ms. Omansky:

Judge Lasker has Mr. Howard's letter of September 10th. It properly states the considerations which the court has in mind.

Judge Lasker has instructed me by this letter to request Ms. Omansky to write him commenting on the observations made in Mr. Howard's letter of September 10th.

Very truly yours,

Ralph Arditi
Law Clerk to Judge Lasker

RA/cw
cc: Deborah Greenberg, Esq.

Letter of Paula J. Omansky Dated September 24, 1974

September 24, 1974

Hon. Morris E. Lasker
United States District Judge
Southern District of New York
United States Courthouse
Foley Square (Rm. 2903)
New York, NY 10007

Re: Jones v. H.R.A. - 73 Civ. 3815

Will[illegible]s v. H.R.A. - 74 Civ. 91

Dear Judge Lasker:

I am writing in response to Mr. Arditi's letter asking me to comment on Mr. Howard's letter of September 10, 1974, which I received on September 16. Since I do not think that Mr. Howard's letter was responsive to the issue as posed by the Court, I take this opportunity to set forth my understanding of the problem.

On my return from vacation, Mr. Arditi told me that the Court thought that defendants' Memorandum of Law had raised "thorny problems" about the adequacy of plaintiffs' proof on their statistical case. Therefore, the Court on its own motion wanted to re-open the record for purposes of securing expert opinion on the significance of the raw data, specifically, whether it can be inferred from the incomplete data on 2 of the 3 challenged open competitive exams, for Sup. HRS and Senior HRS respectively, that blacks, whites, and Hispanics would be likely to pass at the same rates as they did on the two promotional exams given for those positions. (Parenthetically, I would note that the problem of the open competitive exam for the lower level position of HRS remains. There, plaintiffs did not challenge the promotional HRS exam, the raw data

tending to disprove any disparate impact.)

The Court suggested various options to the parties: (a) an expert that both sides would agree upon; (b) an expert from each side; or (c) an expert appointed by the court.

Notwithstanding defendants' original misgivings as to the propriety of re-opening the record 7 months after trial when plaintiffs had not so moved, we came to agree, for several reasons, that the court was correct to call for expert opinion on this crucial aspect of the case and we had already made arrangements to secure such opinion.

In the meantime, Mr. Howard wrote the letter of September 10, 1974, declining all of the options presented by the Court.

To my knowledge, the Court has not withdrawn its request to re-open the record for expert opinion and I am somewhat confounded by Mr. Arditi's statement that Mr. Howard's letter "properly states the considerations which the court has in mind."

Defendants propose to submit expert opinion by way of affidavits on the problem posed by the Court. Accordingly, we ask that the Court set a firm date during the week beginning September 30 for final submission of papers by both sides.

In addition to the unavailability of a statistician, plaintiffs justify their refusal to submit any expert opinion on the ground that "the issue of the discriminatory impact of the Open Competitive exam need not be reached." This argument, offered in response to the court's call for expert testimony, was never before raised, and represents a significant departure from plaintiffs' original position in this case. Defendants submit that the argument has no merit in fact or in law, and in fairness, we should have the opportunity to reply. However, in order to put an end to the dialogue between the lawyers, we propose to submit our response to the new legal argument on the same date the Court fixes for final submission of expert opinion.

Very truly yours,

Paula J. Omansky

cc: Edward Howard, Esq.
Deborah Greenberg, Esq.

Letter of Paula J. Omansky Dated October 10, 1974

The City of New York

LAW DEPARTMENT

MUNICIPAL BUILDING, NEW YORK, N. Y. 10007

PAULA J OMANSKY
Executive Assistant Corporation Counsel

October 10, 1974

Hon. Morris E. Lasker
United States District Judge
Southern District of New York
United States Courthouse
Foley Square - Room 2903
New York, NY 10007

Dear Judge Lasker:

In their letter of September 10, 1974, plaintiffs disclaim their responsibility to make a prima facie case on the open competitive exams. In a sudden shift in strategy, they "submit that the issue of the discriminatory impact of the open competitive exam need not be reached." Plaintiffs reason that the promotional list, for which the statistics are fully known, represents the "top" of a list established for the position of Supervising Human Resources Specialist; and if a discriminatory impact is found there, it would "violate the dictates of both common sense and the law to permit appointment to be made from the 'bottom' of the list, i.e. the O.C. list."

What plaintiffs have done is to seize on a provision of State law according different treatment to two lists and then obliterate that very distinction by merging the two lists into one. Their appeal to reason falls short of both the facts and the law.

To begin with, the facts are that there are two separate lists established as a result of two different exams administered to two different populations. If the promotional list were the "top" of one list, with low scoring promotional candidates ranked higher than high-scoring open competitives, then the State Constitution's mandate that appointments be based on merit and fitness would be violated.

In designating the promotional list as the "top" of the list, plaintiffs suggest that these candidates deserve prior appointment. However, the State law requirement that the promotional list be exhausted before any appointments are made from the open competitive has nothing to do with superior merit. Rather, it represents a legislative determination to reward a quality other than straight exam performance, namely prior civil service employment. Common sense does not dictate the prior appointment of the promotional candidates, as plaintiffs observed during the litigation.

We note that common sense did not impel plaintiffs to challenge the promotional HRS exam. Yet we have precisely the same result which plaintiffs urge this court to avoid, only in reverse. The "top" promotional candidates are assured of appointment although the "bottom" of the list may have shown that an exam, "87.5% identical" was unconstitutional. Neither the legislative preference shown to promotional candidates nor common sense dictates this result.

The promotional list would be appointed first even if the exams were totally dissimilar. In this case, the two exams were similar, and plaintiffs rely heavily on the similarity. Even if the two examinations were identical, but administered to two different populations, the results for the known population would be of limited, if any, value in predicting the results for the unknown population unless there was statistical assurance that it was proper to do so. This is the problem which plaintiffs seek to avoid. It begs the question to note the similarity of the exams and to ignore the statistics. "Numbers comprise a critical element of what the case purports to be about." Gonzalez v. City of New York, 4 E.P.D. §7867 (S.D.N.Y. 1972).

We may, for the sake of argument, assume that plaintiffs' hypothesis is correct, that there is one list and the promotional candidates are the "top" of that list. Defendants submit that plaintiffs are worse off than when they started, since they are then left with incomplete statistics even for one examination. The case law does not permit such an incomplete statistical showing.

Plaintiffs offer no guidance as to how the isolated HRS open competitive is to be treated if their theory is accepted. Logically, plaintiffs should take the position that it is equally unnecessary to reach the issue of statistics on the open competitive HRS where

the promotional results are known, even if unfavorable to them and thus unchallenged. Plaintiffs' theory cannot be conditioned on whether or not they have chosen to challenge the promotional exam.

If it is necessary to reach the issue of the disparate impact for the open competitive HRS exam, the same should be true for the two other open competitives. Otherwise, a difference in treatment would turn on whether the promotional figures favored or disfavored plaintiffs, an untenable result.

Plaintiffs have offered a new theory as an alternative to submitting expert opinion on the significance of the statistics already in evidence. We urge the Court to reject it as contrary to both the facts and the law.

Very truly yours,

Paula J. Omansky

Paula J. Omansky

cc: Deborah Greenberg, Esq.
Edward Howard, Esq.

Letter of Ralph Arditi Dated October 21, 1974

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
UNITED STATES COURT HOUSE
NEW YORK, N. Y. 10007

CHAMBERS OF
JUDGE MORRIS E. LASKER

October 21, 1974

TO: Edward O. Howard, Esq.
Deborah Greenberg, Esq.
Paula Omansky, Esq.

RE: Jones v. H.R.A. 73 Civ. 3815
Williams v. H.R.A. 74 Civ. 91

Judge Lasker has Ms. Omansky's letter of October 10th, which was written at his request in answer to Mr. Howard's letter of September 10th.

After considering the arguments presented in each letter, Judge Lasker requests that the plaintiffs include in the expert opinion evidence which they have been directed to submit, an opinion as to whether in the case of examinations in regard to which the ethnic makeup of a group of examinees is partly known, there is evidence of record from which conclusions as to the ethnic makeup and pass-fail rate of the unknown portion of the group can reasonably be inferred.

Very truly yours,

Ralph Arditi
Law Clerk to Judge Lasker

RA/cw

Affidavit of Richard S. Barrett

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

M.E.L.

73 Civ. 3815

JAMES C. JONES, *et al.*,

Plaintiffs,

—against—

THE NEW YORK CITY HUMAN RESOURCES ADMINISTRATION, *etc., et al.*,

Defendants.

74 Civ. 91

DOROTHY WILLIAMS, *et al.*

Plaintiffs,

—against—

THE NEW YORK CITY HUMAN RESOURCES ADMINISTRATION, *etc., et al.*,

Defendants.

STATE OF NEW JERSEY,
COUNTY OF HUDSON, *ss.*:

RICHARD S. BARRETT, being duly sworn, deposes and says:

1. I make this affidavit at the request of plaintiff's counsel in the above-styled case. I am presently Director, Laboratory of Psychological Studies and Professor and Director of the Applied Psychology Division of Stevens Institute of

Technology. My current *vita* is attached hereto as Exhibit A.

2. In addition to the background described in Exhibit A, I have taken courses in elementary, intermediate and advance statistics, and I have taught elementary statistics as applied to psychology. In my practice of psychology, I regularly use statistics.

3. The Chi-Square Test is a simple, commonly used and generally accepted means of analyzing the kinds of statistics supplied in this case. It can be used with each subject as classified in two categories, i.e., (1) whether he passed or failed the test, and (2) whether he falls into the racial/ethnic category of white or minority. Two minority classes were used in this study, black, and black and Hispanic combined. (There are too few Hispanics for analysis of whites versus Hispanics). The few subjects who were classified as "other" are not included in this study.

4. To understand the Chi-Square Test, one may consider the situation in which there are 100 blacks and 100 whites, and of this group, there are 80 who pass the test, and 120 who fail. If the test were absolutely even-handed, we could expect that 40 blacks would pass, and 40 whites would pass. In real life, we are almost certain to observe that not exactly 40 from each group pass the test. The purpose of the Chi-Square Test is to determine whether the observed pass-fail rate for the two groups differs so much from the expected rate that we are reasonably sure that the differences stem from real differences in the two groups rather than from random differences arising from chance variation in

the sample. It is almost inevitable that there will be some observed difference between the two groups; the question is whether the observed difference is so great that no reasonable person would assert that the two groups are really the same, and that the differences arise only from sampling error.

5. In preparing this affidavit, I have computed the following Chi-Squares,* with the following results:

Examination	*Comparison*	*Chi-Square*
1631	Black v. White	17.81
	Minority v. White	19.63
2013	Black v. White	76.40
	Minority v. White	80.42
1626	Black v. White	44.60
	Minority v. White	43.65
1099	Black v. White	59.40
	Minority v. White	62.49
1097	Black v. White	11.49
	Minority v. White	15.32
1625	Minority v. White	(**)

6. A Chi-Square of 6.64 will occur less than one time in 100 as the result of chance fluctuations in the sample. Con-

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* The Chi-Squares for Examinations #2013, 1099 and 1097 were computed only with respect to the candidates whose racial or ethnic identity is known.

** The nature of Chi-Square dictates that when the expected number of cases in one cell falls below 5, the test should not be used because the results are too unstable to be relied upon. In this instance, the expected number of cases to fall in the cell Whites/Pass is 1.21, and in the cell Whites/Fail is 3.79. Therefore, Chi-Square was not computed.

ventional statistical tables do not include values as large as those reported above because their occurrence as chance events is too small to be considered seriously. The conclusion to be drawn is that there is a genuine difference in the pass rates of the two groups.

7. In some tests, there is a substantial number of candidates whose racial or ethnic identity is unknown. Of those who took Examination 2013, 486 of 994 are not identifiable by racial or ethnic group; of 683 who took Examination 1099, 277 are not identifiable; and of 606 who took Examination 1097, 278 are not identified. The question that is not resolved by the statistical analysis reported above is whether the data on the entire group would show the same result as is shown on the group for whom the race or ethnicity is known. Strictly speaking, such a determination can be made only if there is reason to believe that those whose identity is not known are a random sample of the total group. There is, of course, no way to make this determination. However, the size of the Chi-Square statistics reported above is so great that those whose race or ethnicity is unknown would have to differ in an unrealistically large degree from those whose identity is known to lead to the conclusion that the tests are free of adverse impact. In the absence of compelling evidence that those of unknown identity are from a totally different group than those whose identity is known the results of the above analysis must apply to them as well.

8. I have examined Examination #2013 and 1097. I am informed that Examination #1099 is made up of items from these two tests. In my opinion, these tests are made

up of items of the type on which blacks and Hispanics generally do more poorly than whites.

9. My summary opinion based on an examination of the data and the tests themselves is that Examination #1631, 1097, 2013, 1626 and 1099 have a substantial adverse impact on blacks, and on minorities, i.e., blacks and Hispanics combined.

RICHARD S. BARRETT

(Sworn to November 4, 1974.)

EXHIBIT A ANNEXED TO AFFIDAVIT
OF RICHARD S. BARRETT

Vita

BARRETT, RICHARD S. Born, 1924, Married, 3 Children

5 Riverview Place
Hastings-on-Hudson, N.Y. 10706

Educational Background:

1948 - B.S., Administrative Engineering, Cornell University
1951 - M.A., Education, Syracuse University
1956 - Ph.D., Industrial Psychology, Western Reserve University

Work History

1973 to Date — Director, Laboratory of Psychological Studies; Professor and Director of Applied Psychology Division, Stevens Institute of Technology

1972 to 1973 — Visiting Professor of Management Science, Stevens Institute of Technology

1971 to Date — Consultant on fair employment, Expert witness in Griggs v. Duke Power. Chance v. Board of Examiners, Bridgeport Guardians v. Bridgeport, Castro v. Beecher, U.S.v. Jacksonville Terminal and others

1971 to 1972 — Director, Docet Corporation. Develop educational program.

1971 — Director, Project CONCEPT, City University of New York. Coordinate cooperative education programs in New York City

1969 to 1971 — Assistant Director for Educational Research, Center for Urban Education, New York. Direct research on education of urban children.

1968 to 1969 — Senior Associate, Case and Company, Inc. Consult in personnel and industrial psychology, education, fair employment practices

1965 to 1967 — Director, Materials Evaluation, Science Research Associates, Inc. Supervise investigations in education.

1965 to 1967 — Research Associate Professor of Psychology, New York University. Principal Investigator "Differential Selection Among Applicants From Different Socio-Economic and Ethnic Backgrounds."

1958 to 1965 — Assistant to Associate Professor of Management Engineering and Psychology, Program Director, Research Center for Industrial Behavior, New York University. Supervise research in applied psychology and consult.

1955 to 1958	Vice-President of Personnel Research and Development Corp., Cleveland, Ohio. Consulted in industrial psychology.
Earlier Positions	Research Associate, Operations Research Group at Case Institute of Technology. Professional Associate, Richardson, Bellows, Henry & Co., New York. Industrial Engineer, Liberty Products Corp., Farmingdale, New York.

Professional Societies:

American Psychological Association

Eastern Psychological Association

American Educational Research Association

New York State Psychological Association

Metropolitan New York Association for Applied Psychology

Honorary Societies:

Phi Delta Kappa

Alpha Pi Mu

Certification:

Certified Psychologist, New York State

Diploma:

Diplomate in Industrial Psychology, American Board of Professional Psychology

Community Activities:

Trustee, Board of Education, Dobbs Ferry, 1962 - 1965

Selected Publications:

with Taylor, E.K., Parker, J.W., and Martins, L. Rating Scale Content I. Scale Information and Supervisory Ratings. Personnel Psychology, 1958, 11, pp. 333-346.

with Taylor, E.K., Parker, J.W., and Martins, L. Rating Scale Content II. Personnel Psychology, 1958, 11, pp. 519-534.

with Parker, J.W., Taylor, E.K., and Martins, L. Rating Scale Content III. Relationship Between Supervisory-and Self-Ratings. Personnel Psychology, 1959, 12, pp. 49-64.

Selected Publications: (Cont'd.)

Survey of Human Engineering, Machine Design, January 24, 1957.

The Agreement Scale: A Preliminary Report, Personnel Psychology, 1961, 14, pp. 151-165.

with Goldberg, M., and Dawson, R.I., Comparison of Programmed and Conventional Instruction Methods. Journal of Applied Psychology, 1965, 48, pp. 110-114.

with Feinberg, M.R., Balinsky, B., Garber, R., Ruch, F., and Steckel, L. Outside Consultants to Industry: Strengths, Problems, and Pitfalls (A Symposium). Comments on the Symposium. Personnel Psychology, 1964, 2, pp. 128-133.

with Heinneman, R.F.D. Human Engineering Considerations in the Evaluation of the Instructor's Console of OFT's. Report to Special Devices Center, 1953.

with Katzell, R.A., and Parker, T.C. Job Satisfaction, Job Performance and Situational Characteristics. Journal of Applied Psychology, 1961, 45, pp. 65-72.

The Process of Predicting Job Performance. Personnel Psychology, 1958, 11, pp. 39-57.

Guide to Using Psychological Tests. Harvard Business Review, 1963, Sept. - Oct., pp. 138-146.

Performance Suitability and Role Agreement: Two Factors Related to Job Satisfaction. Personnel Psychology, 1963 Winter, pp. 345-357.

Explorations in Job Satisfaction and Performance Rating, Personnel Administration. Sept. - Oct., 1964, 27, pp. 14-17.

The Impact of the Executive Program on the Participants. Journal of Industrial Psychology, 3, 1965, pp. 1-14.

Performance Rating. Chicago, Science Research Associates, 1966.

Problems de selection. Synopsis, March 1965, pp. 3-16.

Reviews in Buros, O.K. Sixth Mental Measurements Yearbook. Highland Park, Gryphon Press.

The Influence of Supervisor's Requirements on Ratings. Personnel Psychology, 1966 Winter, pp. 375-387.

Selected Publications: (Cont'd.)

Gray Areas in Black and White Testing, Harvard Business Review, January-February, 1968, pp. 92-95.

with Kirkpatrick, J.J., Ewen, R.B., and Katzell, R.A. Testing and Fair Employment. New York, New York University Press, 1968.

The Computer Mentality, Phi Delta Kappan. April, 1968, pp. 431-435.

with Heller, Barbara R. Expand and Improve: A Critical Review of the First Three Years of ESEA Title I in New York City, New York, Center for Urban Education, 1970.

The Expert Witness: Discrimination in Employment, Professional Psychology 2. 1971, pp. 366-372.

View from the Under Side, The Industrial Psychologist (In Press)

Affidavit of Gus W. Grammas

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT NEW YORK

73 Civ 3815

JAMES C. JONES, GLORIA DEBERRY, *et al.*, individually and on behalf of all others similarly situated,

Plaintiffs,

—against—

THE NEW YORK CITY HUMAN RESOURCES ADMINISTRATION, JULE M. SUGARMAN, *et al.*,

Defendants.

STATE OF NEW YORK,
COUNTY OF NEW YORK, *ss.*:

GUS W. GRAMMAS, being duly sworn, deposes and says:

1. I am presently an Assistant Professor of Management Science at Columbia University, Graduate School of Business in New York, in the area of Statistics and Operations Research. I teach Multivariate Statistics, Advanced Statistics, and Elementary Statistics.

2. I was graduated in 1963 with an A.B. degree in Mathematics from Columbia College and in 1972 received a Ph.D. degree in Mathematical Statistics from Columbia University.

3. I have been teaching at the Graduate School of Business since 1969. In 1970 and in 1973, I was one of 3 recipients of the Graduate School's Distinguished Teaching Award.

4. My professional memberships include the Operations Research Society of America; the American Statistical Association, and the Institute of Mathematical Statistics.

5. I was consulted by Paula Omansky of the Corporation Counsel's Office and asked to give my professional opinion on the statistical significance of certain data.

The figures which were supplied to me and on which my analysis is based are attached hereto as Exhibit A. I was advised that examination Nos. 1631, 1626, and 1625 are known as promotional exams and were open only to City employees working for the Human Resources Administration (HRA). Examination Nos. 2013, 1099, and 1097 are known as open competitive examinations and were open to all persons who met the City's eligibility requirements. I am further advised that the promotional and open competitive exams for Supervising Human Resources Specialist (HRS), and Senior HRS, and Human Resources Specialist, differed by only 10 questions at each level. Racial identification was determined from the files of HRA, and noted on the computer runs of the results of the examination.

The racially identified population will be known as the "HRA" population. The population for which no racial identification was made will be known as the "non-HRA" population.

6. Specifically I was asked whether the racial make-up and pass-fail rates for unidentified test-takers could be inferred from the figures available for the known test-takers or whether an examination for which partial results were known could be said to have had a racially disparate impact on unidentified persons when no results were known as to them.

7. It is my opinion that neither racial break-down nor pass-fail can be inferred about the unidentified test-takers from the known group and that there is no statistical basis for postulating a racially disparate impact on the unidentified group based on the results available for the known group.

8. On the other hand, a set of assumptions could be made about the non-HRA population which could then be tested against the only known fact about that population, namely the over-all pass-rate. The issue then becomes whether the known fact is consistent or inconsistent with our assumptions.

9. For example, consider the figures available for exam No. 2013. We know nothing about the non-HRA population except the over-all pass-rate, 183/486 or .377. We have no figures at all on the racial breakdown and pass-fail rates even of a sample of that population.

For the sake of argument, I will make three assumptions which plaintiffs would need to make in order to establish disparate impact on the non-HRA population.

1) that the non-HRA population breaks down into the same racial groups as the HRA population; in other words

   Blacks comprise .494 (247/500);
   Whites comprise .466 (233/500);
   Hispanics comprise 04 (20/500)

2) that the pass-fail rates are the same for both HRA and non-HRA populations; in other words

   Blacks passed at the rate of 16% (39/247)
   Whites passed at the rate of 54% (125/233)
   Hispanics passed at the rate of 15% (3/20);

3) that the 486 non-HRA candidates are a random sample of the total population which was eligible to take the open competitive examination.

I emphasize that these assumptions are matters of pure speculation on my part. I have no personal knowledge that the assumptions are even reasonable and I am advised that there are no facts in the record of the trial to warrant these assumptions.

10. Nonetheless, based on these assumptions,

    Blacks comprise 240 of the non-HRA group (486x.499)

    Whites comprise 227 of the non-HRA group (486x.466)

    Hispanics comprise 19 of the non-HRA group (486x.04)

We could then expect an over-all pass rate of .337 (164/486):

	Total	*Pass*	
Blacks	240	38	(240x.16)
Whites	227	123	(227x.54)
Hispanic	19	3	(19x.15)
	486	164	

The real pass rate is .377 (183/486)

11. The statistical question is whether the observed or real pass rate (.377) is significantly different from the hypothesized rate (.337). I conclude that it is not, based on standard statistical formulas:

$$\bar{0}\ \text{prop} = \sqrt{\frac{.377(.663)}{486}} = \sqrt{\frac{.2234}{486}} = \sqrt{.00046} = .0214$$

$$Z = \frac{.337-.377}{.0214} = \frac{04}{.0214} = -1.869$$

The two formulas used are standard statistical procedures when we have a random sample from a population and we are testing an observed proportion versus a hypothesized proportion.

The sigma formula ($\bar{0}$ prop) is a measure of variation (a type of standard deviation) in the hypothesized population. The Z formula compares the two rates with respect to the measure of variation and allows us to test statis-

tically whether the observed rate is significantly different from the hypothesized rate.

In this hypothetical example, as I have stated the rates are not significantly different. More specifically, at the 95% level of confidence (the standard level at which we reject or accept hypothesis), meaning that we are willing to take only a 5% chance of being wrong, we would accept that the hypothesized and observed pass-rates are the same.

12. I emphasize that the statistical data analysis we have just performed does not establish that the three assumptions we made are correct. The analysis merely means that if we are willing to make the three assumptions for exam No. 2013, the observed data, namely the real pass-rate of .377, does not contradict the three assumptions.

13. However, this is true only for exam No. 2013. If we made the same assumptions for exams No. 1099 and 1097, as we made for exam No. 2013, the observed data, the over-all pass-rates, do in fact contradict the assumptions.

For exam No. 1099:

1. Assume same population breakdown:

   Black = 221/406 = .544
   White = 155/406 = .382
   Hispanic = 30/406 = .074

2. Assume same pass-fail rate:

   Black = 56/221 = .253
   White = 101/155 = .652
   Hispanic = 8/30 = .267

3. Then from a random sample of 277 of the non-HRA group, we would expect an overall pass rate of .404 (112/277)

	Total	*Pass*	
Black	151	38	(151x.253)
White	106	69	(106x.652)
Hispanic	20	5	(20x.267)

The real or observed pass rate is 90/277 = .325. Thus:

$$\bar{0}\ \text{prop} = \sqrt{\frac{.404(596)}{277}} = \sqrt{.000869} = .0295$$

$$z = \frac{.404-.325}{.0295} = 2.678$$

14. The rates are significantly different at the 95% level of confidence and we would reject the hypothesis that the rates are the same. The observed pass-rate contradicts at least one of the assumptions we were willing to make. I am unable to state which assumption is invalid and there is no way to establish which one is invalid from the date in Exhibit A.

15. Similarly, for exam No. 1097

1. Assume same population breakdown:

Black = 175/326 = .537
White = 115/326 = .353
Hispanic = 36/326 = .110

2. Assume same pass-fail rate:

   Black = 55/175 = .314
   White = 59/115 = .513
   Hispanic = 7/36 = .194

3. Then from a random sample of 278 of the non-HRA group we would expect over-all pass rate of .371 (103/278):

	Total	*Pass*	
Black	149	47	(149x.314)
White	98	50	(98.513)
Hispanic	31	6	(31x.194)

The real rate is 78/278 = .281
Thus

$$\bar{0}\ \text{prop} = \sqrt{\frac{.371\ (.629)}{278}} = \sqrt{.00089} = .0289$$

and

$$Z = \frac{.371-.281}{.0289} = 3.114$$

The rates are significantly different at the 95% level of confidence. The data again contradicts at least one of the assumptions.

16. I could make any number of assumptions about the non-HRA group since the only known fact is the over-all pass rate. For example, I could assume that each group in the non-HRA population for exam No. 2013, minority and non-minority alike, had an over-all pass rate of .377, identical to the observed pass rate. A similar statistical

analysis would not contradict this assumption either. On the other hand, it does not establish that this assumption is correct.

17. There is no statistical basis for preferring one set of assumptions over another in the absence of facts.

18. The only valid statistical conclusion that can be drawn from the data on exam No. 2013 is that .377, the observed pass rate, is a good estimate of the over-all pass rate for the non-HRA group.

19. In order to make valid statistical analysis of the effect of exam No. 2013 on the non-HRA group, we would need to know the racial identity of the examinees. This should be verified independently, presumably at the time at which they appeared for the exam. Then, the pass-fail rates for the different racial groups could be compared.

It should be noted that this is substantially the data which is available for the HRA employees. Based on this data, I might be tempted to say that disparate impact resulting from the examinations has been established for the HRA population. Yet on closer examination, disturbing inconsistencies are revealed. For example, while 2 out of the 3 examinations for Senior HRA (Nos. 1626 and 1099) had disparate impact, a third (No. 1094) apparently did not. This is also true for the Human Resources Specialist Examinations (compare No. 1625 with Nos. 1095 and 1097).

Furthermore, the Hispanic HRA population does not have a consistent pattern with relation to the Black HRA population. At times, their pass rate is much higher (Nos. 1095 and 1626); at times, much lower (No. 1097).

Because of these inconsistencies, the data is not conclusive that there is disparate impact on the HRA population.

20. I have been asked (1) whether any meaningful statistical conclusions can be drawn about a group if less than the complete data is available with regard to racial composition and pass fail rates; (2) why, on exam No. 2013, for example, the HRA group, which represents 51% (508/994) of the total exam taking population, is not a sufficient or reliable sample of the non-HRA population from which meaningful statistical conclusions may be drawn, and (3) what significance, if any, can be attached to the fact that the HRA group passed the open competitive exam (No. 2013) at rates almost identical to the HRA group which took the promotional exam.

21. As to the first question, statistical conclusions can be drawn if we have less than complete data on a population. However, we do not have here sufficient facts to draw any conclusion. For example, in a market test sample, you would want to find out what percentage of the population is interested in buying a product. As a statistician, you would draw a random sample from the population in which you were interested and send out questionnaires. A typical response rate if 20%. To draw any statistical references from the 20% response group, you would have to do follow-up studies among the 80% non-response to settle any question of bias in the statistical sense: is it a characteristic of the non-response group that they were not interested in the product? If as a result of the follow-up study, you find that there is no bias, you can proceed to base estimates on the data which you do have from the 20% response group.

Here, the HRA group is not a random sample of the non-HRA group. In fact, we know nothing of the non-HRA group in terms of racial make-up and pass fail rates. Most assuredly, we have no follow-up studies on the non-HRA, or non-response group.

The data which we do have on the HRA group is of no greater value in drawing inferences about the non-HRA group than it would be for drawing inferences about an examination taking group who were all residents of Oshkosh.

22. As for question 2), as I have stated above, the HRA group is not a sample of the non-HRA group. Therefore, we need not reach the question of whether it is a sufficient or reliable sample.

23. As for question 3), there is no significance in the fact that the HRA group passed the open competitive exam for Supervising HRA (No. 2013) at rates almost identical to the HRA group which took the promotional exam (No. 1631). One would expect this result because it is the same group, HRA employees, and almost the same exam. It provides us with no information about the non-HRA group.

In summary, then, the racial make-up and pass-fail rates for the unknown non-HRA group cannot be inferred from the data available for the known HRA group and there is no statistical basis for postulating a racially disparate impact on the unidentified group based on the results for the HRA group.

GUS W. GRAMMAS

(Sworn to November 7, 1974.)

EXHIBIT A ANNEXED TO AFFIDAVIT OF GUS W. GRAMMAS

EXAMINATIONS FOR SUPERVISING HUMAN RESOURCES SPECIALIST

Exam No. 1631 (Promotional)

	Pass	Fail	Total	% Passing
Blacks	12	57	69	17%
Whites	28	24	52	54%
Hispanics	2	13	16	19%
Other	-	1	1	0%
	43	95	138	

Exam No. 2013 (Open Competitive)

	Pass	Fail	Total	% Passing
Blacks	39	208	247	16%
Whites	125	108	233	54%
Hispanics	3	17	20	15%
Other	5	3	8	63%
	172	336	508	
Unknowns	183	303	486	38%
	355	639	994	

Exhibit A Annexed to Affidavit of Gus W. Grammas

EXAMINATIONS FOR SENIOR HUMAN RESOURCES SPECIALIST

Exam No. 1626 (Promotional)

	Pass	Fail	Total	% Passing
Blacks	11	51	62	18%
Whites	30	4	34	88%
Hispanics	3	5	8	38%
Other	-	2	2	0%
	44	62	106	

Exam No. 1099 (Open Competitive)

	Pass	Fail	Total	% Passing
Blacks	56	165	221	25%
Whites	101	54	155	65%
Hispanics	8	22	30	27%
	165	241	406	
Unknowns	90	187	277	32%
	255	428	683	

Exam No. 1094 (NDT-Open Competitive)

	Pass	Fail	Total	% Passing
Blacks	18	41	59	31%
Whites	5	10	15	33%
Hispanics	7	15	22	32%
Other	-	1	1	0%
	30	67	97	
Unknowns	18	78	96	19%
	48	145	193	

Exhibit A Annexed to Affidavit of Gus W. Grammas

EXAMINATIONS FOR HUMAN RESOURCES SPECIALIST

Exam No. 1625 (Promotional)

	Pass	Fail	Total	% Passing
Blacks	13	36	49	27%
Whites	1	4	5	20%
Hispanics	-	4	4	0%
	14	44	58	

Exam No. 1097 (Open Competitive)

	Pass	Fail	Total	% Passing
Blacks	55	120	175	31%
Whites	59	56	115	51%
Hispanics	7	29	36	19%
Other	1	1	2	50%
	122	206	328	
Unknowns	78	200	278	28%
	200	406	606	

Exam No. 1095 (MDT-Open Competitive)

	Pass	Fail	Total	% Passing
Blacks	12	44	56	21%
Whites	8	9	17	47%
Hispanics	7	16	23	30%
	27	69	96	
Unknowns	12	74	86	14%
	39	143	182	

Opinion Dated January 10, 1975

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

73 Civ. 3815

74 Civ. 91

[CAPTIONS OMITTED]

Appearances:

COVINGTON, HOWARD, HAGOOD & HOLLAND, Esqs.
15 Columbus Circle
New York, New York 10023
DEBORAH GREENBERG, Esq.
JACK GREENBERG, Esq.
JEFFREY MINTZ, Esq.
10 Columbus Circle
New York, New York 10015

Attorneys for Plaintiffs

ADRIAN P. BURKE, Esq.
Corporation Counsel of the City of New York
Municipal Building
New York, New York 10007
PAULA J. OMANSKY, Esq.
Executive Assistant Corporation Counsel

Attorneys for Defendants.

Opinion Dated January 10, 1975

LASKER, *D.J.*

The Human Resources Administration (HRA), a "super-agency" of the City of New York, was created in 1966 in order to coordinate and administer the varied city programs dealing with poverty and social services. Plantiffs in these two consolidated actions challenge five civil service examinations for positions in the Human Resources Specialist (HRS) Series. They claim that the examinations had a discriminatory impact on Blacks and Hispanics and are not job-related. The named plaintiffs and the class they seek to represent are Black and Hispanic persons[1] who took and failed one or more of the five examinations challenged here. They seek (1) a declaration of the unconstitutionality of the examinations; (2) an injunction against appointments from the lists based on the results of the examinations; (3) an injunction requiring the creation of constitutionally adequate selection procedures for the positions in question and (4) an injunction requiring the permanent appointment of those presently serving as provisional employees to the positions they now occupy. Suit is brought under 42 U.S.C. §§1981 and 1983. Jurisdiction is based on 28 U.S.C. §§1343(3) and (4), and the Fifth and Fourteenth Amendments.

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[1] An unusually large number of provisional employees is involved in the present suits. The large number of provisionals in the three titles under challenge resulted from the exhaustion of civil service lists based on the training and experience examination administered in 1968.

In 1972 three examinations were given to select for each of the three titles in issue: an open competitive exam, on which both HRA employees and members of the public meeting certain general qualifications were eligible to compete; a promotional exam, for which only HRA employees in the next lower grade were eligible; and a specialty exam in Manpower Development and Training (MDT). As noted above, five of these exams are challenged: The open competitive exams for HRS, Sr. HRS and Sup. HRS; and the promotional exams for Sr. HRS and Sup. HRS.

Opinion Dated January 10, 1975

The *Jones* plaintiffs challenge examinations No. 1631 and 2031, the promotional and open competitive examinations for the position of Supervising Human Resources Specialist (Sup. HRS). The *Williams* plaintiffs attack the constitutionality of the open competitive examination (No. 1097) for Human Resources Specialist (HRS) and both the promotional and open competitive examinations for Senior Human Resources Specialist (Sr. HRS) (Nos. 1626 and 1099). By earlier orders the city has been preliminarily enjoined from making appointments based on any of the examinations.[2]

Trial of the issues in *Jones* has been completed. By stipulation, the parties have supplemented the record developed in *Jones* to enable the court to decide the merits of *Williams*.

Cases of this type, and these suits in particular, involve a prodigious amount of factual matter. Accordingly, we have so far as possible restricted the text of this opinion to substantive discussion, and made extensive use of footnotes for other material.

I.

The present suits follow in the wake of several recent cases in this Circuit involving civil service examinations alleged to have a disparate impact on minority applicants.

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[2] Because permanent appointment to the position of Supervising HRS is a prerequisite to taking the examination for Principal HRS, an injunction was granted at the same time against holding the promotional and open competitive Principal's exams, so that persons who passed the challenged Supervising HRS exam and would not be deprived of the opportunity of ultimately taking the Principal's exam on account of the preliminary injunction against appointment from the Supervising HRS list.

See, e.g., *Vulcan Society* v. *Civil Service Commission,* (hereafter "Vulcan"), 490 F.2d 387 (2d Cir. 1973), *aff'g* 360 F. Supp. 1265 (S.D.N.Y. 1973); *Bridgeport Guardians, Inc.* v. *Bridgeport Civil Service Commission,* ("Bridgeport Guardians"), 482 F.2d 1333 (2d Cir. 1973) *aff'g in part and rev'g in part,* 354 F. Supp. 778 (D. Conn. 1973); *Chance* v. *Board of Examiners,* ("Chance"), 458 F.2d 1167 (2d Cir. 1972) *aff'g* 330 F. Supp. 203 (S.D.N.Y. 1971); *Kirkland* v. *N.Y. State Dep't of Correctional Services,* ("Kirkland"), 374 F.Supp. 1361 (S.D.N.Y. 1974).

The ground rules established in those decisions require plaintiffs to make a prima facie showing that the examinations have a "racially disproportionate impact," *Vulcan,* 490 F.2d at 391, *Chance,* 458 F.2d at 1175-1176; see also *Castro* v. *Beecher,* ("Castro"), 459 F.2d 725, 732 (1st Cir. 1972). Upon such a showing the burden shifts to the defendants to establish that the challenged examinations are job-related, *Vulcan,* 490 F.2d at 391. If it is demonstrated that disparate examination performance results from the candidates' relative qualifications for the job, rather than their race, the examinations are constitutionally adequate, in spite of their racially disparate impact. *Griggs* v. *Duke Power Co.,* 401 U.S. 424 (1971), *Chance,* 330 F.Supp. at 214. The burden on defendants is "a heavy one," *Chance,* 458 F.2d at 1176, *Guardians,* 482 F.2d at 1337, but is discharged if they "come forward with convincing facts establishing a fit between the qualification and the job." *Vulcan,* 490 F.2d at 393 quoting with approval *Castro,* 459 F.2d at 732. The defendants are not required to prove that no alternative methods of selection were available to them; the critical question is whether the challenged procedure is

constitutionally sound, not whether a better one could have been devised. *Castro*, 459 F.2d at 733, *Vulcan*, 490 F.2d at 393.

II.

DISPROPORTIONATE IMPACT

A. As in earlier suits, plaintiffs base their prima facie case on statistics provided by defendants as to the race of passing and failing candidates. However, as to three of the five examinations in question, the data is incomplete because HRA does not keep records of the race of candidates who were not HRA employees at the time they took an examination. Neither side suggested or undertook, and the court did not order, a survey to determine the race of those not identified in HRA's records.[3] Accordingly, as to

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[3] The adequacy of plaintiffs' statistical case was raised for the first time in defendants' post-trial memorandum. It was not raised on the motions for a preliminary injunction in *Jones* (September, 1973) or *Williams* (December, 1973 and January, 1974); nor did defendants move to dismiss the complaint at the close of plaintiffs' case at trial.

We attach no particular significance to the timing of defendants' attack, except to note that it comes after our decision in *Hill* v. *Human Resources Administration*, 74 Civ. 1150 (March 29, 1974), in which we denied a preliminary injunction because of the apparent undependability there of plaintiffs' statistics.

Plaintiffs suggest that our findings of statistical impact on the motions for preliminary injunction in *Jones* and *Williams* are the "law of the case," by which defendants (and the court) are bound. Putting aside the fact that such motions decide only the probability of success of the merits rather than the merits themselves, we believe questions such as the one before us should not, after trial, be decided on the deliberate basis upon which preliminary relief is normally predicated.

Upon consideration of the argument raised by defendants' post-trial memorandum, the court directed the parties to supplement the trial record by furnishing affidavits of statistical experts as to the significance of the statistical data in the trial record.

2013 the ethnicity of only 51% of the candidates is known; for 1097 and 1099 the figures are 54% and 60% respectively. The available statistics are set forth in the chart below:

Challenged Exam No. 1631 (Sup. HRS) (Prom.)

	Pass	*Fail*	*Total*	*% Passing*
Blacks	12	57	69	17%
Whites	28	24	52	54%
Hispanics	3	13	16	19%
Unknown	—	1	1	
	43	95	138	

Challenged Exam No. 2013 (Sup. HRS) (OC)

	Pass	*Fail*	*Total*	*% Passing*
Blacks	39	208	247	16%
Whites	125	108	233	54%
Hispanics	3	17	20	15%
Others	5	3	8	63%
Subtotal	172	336	508	
Unknown	183	303	486	38%
	355	639	994	

Challenged Exam No. 1626 (Sr. HRS) (Prom.)

	Passed	*Failed*	*Total*	*% Passing*
Blacks	11	51	62	18%
Whites	30	4	34	88%
Hispanic	3	5	8	37%
Other	—	2	2	
	44	62	106	

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Challenged Exam No. 1099 (Sr. HRS) (OC)

Blacks	56	165	221	26%
Whites	101	54	155	65%
Hispanic	8	22	30	27%
Subtotal	165	241	406	
Unknown	90	187	277	32%
	255	428	683	

Challenged Exam No. 1097 (HRS) (OC)

Blacks	55	120	175	31%
Whites	59	56	115	51%
Hispanics	7	29	36	19%
Other	1	1	2	
Subtotal	122	206	328	
Unknown	78	200	278	28%
	200	406	606	

Putting aside for the moment the question of the representativeness of the available data for Examinations No. 2013, 1099 and 1097, the existing figures for all five examinations clearly indicate a disparity between the passing rates of white and minority candidates in excess of the 1.5 to 1 ratio which *Chance* held sufficient to establish a prima facie case. 330 F. Supp. at 210.[1]

[1] In *Guardians*, whites passed at 3.5 times the rate for Blacks and Hispanics, 354 F.Supp. at 784; in *Vulcan*, whites scored high enough to have a chance for appointment at 2.8 times the rate of Blacks and Hispanics, 350 F.Supp. at 1269. In *Kirkland*, whites passed at a rate of about 4 times that of Blacks and 2.5 times that of Hispanics. 374 F.Supp. at 1366-67.

As to No. 1631, for which complete data is available, whites passed at a rate of approximately three times that of Blacks and Hispanics (54% to 17% and 19% respectively). On Examination No. 1626, for which the data is also complete, whites passed at a rate of about five times that of Blacks and 2.4 times the rate of Hispanics (88% to 18% and 37%, respectively).

The available figures for No. 1099 indicate that whites passed at 2.5 the rate of Blacks and Hispanics (65% to 26% and 25%, respectively). As to No. 2013, whites passed at over three times the rate of Blacks and Hispanics (54% to 16% and 15%, respectively). Whites passed No. 1097 at a rate of 1.7 times that of Blacks and 2.7 that of Hispanics (51% to 31% and 19%, respectively). In sum, the figures for all five examinations indicate a disparate impact in favor of white candidates in excees of the 1.5 to 1 ratio that carried the day for plaintiffs in *Chance*.

Not surprisingly, defendants' most vigorously pressed objection to plaintiffs' prima facie case is the incompleteness of the data for Nos. 2013, 1099 and 1097. They argue that in the absence of complete and reliable data as to the race and passing rate of all, or substantially all, candidates on these exams, plaintiffs have failed to establish a prima facie case.[5] Defendants make the related argu-

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[5] In earlier cases, the court had before it substantially complete statistics as to the racial makeup of the group taking the tests. In *Chance* the parties compiled a statistical survey to provide pass-fail data covering fifty examinations given over a period of seven years, for supervisory positions in the New York City school system. The court there did not accord significance to figures for 41 of the 50 examinations, on which a total of only 83 minority candidates competed—clearly too small a sample on which to base a finding of disparate impact. Instead the court relied on figures from the nine examinations taken by ten or more minority candidates, finding that plaintiffs had established a prima facie case. 330 F.Supp. at 209-214. As to all 6,201 candidates taking the 50 examinations

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ment that even assuming that the complete figures for Nos. 1631 and 1625 show substantial disparate impact as to those exams, the inconclusive nature of the statistics for

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in *Chance* (5,910 of whom were identified by race), white candidates passed at a rate of almost 1½ times the rate of minority candidates (44.3% to 31.4%).

In *Bridgeport Guardians* v. *Bridgeport Civil Service Commission, supra*, *Vulcan Society* v. *Civil Service Commission, supra*, and *Kirkland* v. *Department of Correctional Services, supra*, statistics as to the racial makeup and pass-fail rates of examined groups were complete or virtually complete. In *Hill* v. *N.Y.C. Human Resources Administration*, No. 74 Civ. 1150 (S.D.N.Y. March 29, 1974), *aff'd* —— F.2d —— (2d Cir. 1974), this court declined to grant a preliminary injunction in a suit challenging three examinations. As to the first test, data were available for only 9% of those who passed and 3% of those who failed, and in any event, the available statistics did not indicate substantial disparate impact. On the second test the ethnic identity of 44% of passers and 16% of failures were known, with whites passing at a rate of about 1.5 times the rate of minorities. On the third test the ethnic identity of 28% of passers and 16% of failures were known; whites passed at about the same rate as Hispanics and about 1.5 times the rate of Blacks.

Defendants cite *Hill* as authority that anything less than complete statistics is too little on which to base a prima facie case on the merits. We disagree with this reading on our decision there. First, comparison of the figures available in *Hill* with those now before the court shows that the present plaintiffs have presented data as to a considerably higher proportion of candidates than those in *Hill*: as to examination No. 2013, the ethnic identity of 51% (49% of those passing and 53% of those failing) is known; for Nos. 1099 and 1093 the figures are 60% (64% of those passing and 56% of those failing) and 54% (61% of those passing and 49% of those failing), respectively. Moreover, substantial disparate impact was not shown, even as to the available samples, in all three examinations in *Hill*. The reverse is true in the present case because the available samples with one exception indicate disparate impact of far greater magnitude than the 1.5 to 1 found to be sufficient in *Chance*.

Furthermore, the *Hill* decision merely determined a request for preliminary relief which classically calls for the application of dif-

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the other three tests and plaintiffs' failure to challenge two additional exams in the HRS series whose results are inconclusive as to impact, indicate that the class did not fare significantly worse than whites on the HRS series *on the whole*, which defendants claim is the proper standard. For the reasons stated below, we find that neither argument has merit and that plaintiffs have established a prima facie case as to all five exams.

B. Although neither side produced a statistical expert at trial, experts for each of the parties have submitted affidavits as to the significance of the statistics in the record.

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ferent legal standards than a trial on the merits and which, in cases like the present one does not permit the deliberate consideration appropriate to issues of substantial public importance which is possible after trial.

In addition to *Hill*, defendants cite in support of their attack on plaintiffs' prima facie case *Gonzalez* v. *City of New York*, 4 E.P.D. ¶7867 (S.D.N.Y. 1972) and *Boston Chapter, N.A.A.C.P.* v. *Beecher*, 7 E.P.D. ¶9162 (D. Mass. 1974). The cases are inapposite. *Gonzalez* involved an attack on a civil service examination by five minority professional employees, four of whom failed and one of whom did not take the exam. The court did not have before it statistics as to the race of *anyone* who took the exam, apart from plaintiffs themselves. In *Beecher* the race of 84% of the candidates (3,181 of 3,790) was known through voluntary self-reporting. 3,089 of these (97%) were whites, who passed at a rate of 54%; the rate for 15 candidates identifying themselves as "Negroid" was 56%; for 18 "Blacks," 44.5%; for 15 Hispanics, 33%; and for the combined minorities 39%. In view of the small number of minority candidates, and a white rate exceeding the combined minority rate by only 1.4 to 1, the court relied not on the test results, but on the disparity between percentage representation of minorities in the general populations in the fire departments of various cities, in concluding that plaintiffs had not established a prima facie case.

Plaintiffs' expert, Richard S. Barrett, is a nationally recognized expert in the field of testing. His affidavit sets forth certain computations using the Chi-Square Test, a generally accepted means of analyzing statistics of the type used in lawsuits such as this one. See *Chance,* 458 F.2d at 1173, 330 F. Supp. at 212. The purpose of the Chi-Square Test, as described by Barrett, is to determine whether a differential pass rate for two or more groups arises from a real difference in the performance of the groups, or from random differences arising from chance variation in the sample. (Barrett affidavit, dated November 4, 1974, Paragraph 4.) In this case, the Chi-Square Test attempts to determine whether the lower passing rates for Blacks and Hispanics resulted from mere chance, or from a factor related to race.

Barrett's computations, which are based on the complete statistics for Nos. 1631 and 1626, and on the available statistics for Nos. 2013, 1099 and 1097, are set forth below:

Examination	*Comparison*	*Chi-Square*
1631	Black v. White	17.81
	Minority v. White	19.63
2013	Black v. White	76.40
	Minority v. White	80.42
1626	Black v. White	44.60
	Minority v. White	43.65
1099	Black v. White	59.40
	Minority v. White	62.49
1097	Black v. White	11.49
	Minority v. White	15.32

Barrett states that a Chi-Square of 6.64 will occur less than one time in 100 as the result of chance, and that conventional statistical tables do not include values as large as those shown in the chart "because their occurrence as chance events is too small to be taken seriously." (Barrett affidavit, Paragraph 6) Accordingly, as to Nos. 1631 and 1626, for which complete statistics are available, it is readily apparent that plaintiffs have established disproportionate impact not resulting from chance.

The question that is unresolved by the Chi-Square analysis set forth above is whether the data for the entire group of candidates on Nos. 2013, 1097 and 1099 would show the same results as Barrett calculated on the basis of the known candidiates on those exams. On this question Barrett states:

> "Strictly speaking such a determination can be made only if there is reason to believe that those whose identity is not known are a random sample of the total group. There is, of course, no way to make this determination. However, the size of the Chi-Square statistics reported above [which were computed on the basis of the known group only] is so great that those whose race or ethnicity is unknown would have to differ in an unrealistically large degree from those whose identity is known to lead to the conclusion that the tests are free from adverse impact." (Barrett affidavit, Paragraph 7).

Although we recognize that in cases such as this, we may walk through statistical mine fields, Barrett's conclusions do accord with common sense. On No. 2013, for example, for which the ethnicity of 51% of candidates is known (the

HRA population)[5a] whites passed at over 3 times the rate of Blacks and Hispanics. We find it distinctly improbable that minority group members in the non-HRA (unknown) group would outperform non-HRA whites on the same examination to the extraordinary degree necessary to bring the overall passing rates for minorities and whites into rough parity. This conclusion is buttressed by Barrett's observation that Nos. 2013, 1097 and 1099 are "made up of items of the type on which Blacks and Hispanics generally do more poorly than whites." (Barrett affidavit, Paragraph 8.) Cf. *Griggs*, 401 U.S. at 430. We reach the same conclusion as to No. 1097, which whites passed at a rate of 1.7 that of Blacks and 2.7 times that of Hispanics. The ethnicity and pass-fail results of 54% of the candidates are known. Consequently, minorities in the non-HRA group would have to outscore non-HRA whites substantially on that examination to negate the strong showing of adverse impact. The same conclusion applies to Examination No. 1099 which whites passed at a rate 2.5 that of minority candidates, and as to which the ethnicity of 60% of the candidates is known.

In sum, we find that the data of record meets the standard to establish a prima facie case as articulated by Judge Friendly in *Vulcan:*

> "It may well be that the cited figures and other more peripheral data relied on by the district judge did not

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[5a] As used here, the term "HRA population" indicates candidates who were employed by HRA at the time of the examination and whose ethnic identity is known. The "unknown" group in Nos. 2013, 1099 and 1097 is made up of those who were not employees of HRA. In this Opinion they are termed the "non-HRA population."

> prove a racially disproportionate impact with complete mathematical certainty. But there is no requirement that they should. Certainty generally is illusion, and repose is not the destiny of man. We must not forget the limited office of the finding that black and Hispanic candidates did significantly worse in the examination than others. That does not at all decide the case; it simply places on the defendants a burden of justification which they should not be unwilling to assume." 490 F.2d at 393.[6]

The affidavit of defendants' statistical expert, Gus W. Grammas, is not inconsistent with our conclusions as to 2013, 1099 and 1097.[7] It states, and we agree, that neither

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[6] The remarks of Judge Weinfeld, the trial judge in *Vulcan*, are also apposite here:

> "... Where public employment practices are under challenge defendants usually have superior access to relevant statistical data than plaintiffs and ... the latter will often be dependent on the efforts and good faith of the former. In addition, statistical evidence by its very nature deals with probabilities rather than certainties. All that can be required of methods employed in gathering such evidence is that they assure reasonably accurate findings. Absolute perfection usually is not attainable in this kind of endeavor. [Footnote omitted] The right of racial minorities to demand that the State justify even de facto discrimination may not be so restricted that it exists in principle but not in fact." *Vulcan*, 360 F.Supp. at 1270.

[7] Grammas postulates a set of assumptions about the non-HRA populations on 2013, 1097 and 1099 which he tests against the only known fact about these populations, the overall pass-rate of the non-HRA groups on each exam. Grammas' three assumptions are (1) that the whites, Blacks and Hispanics in the non-HRA populations are represented in the same proportions as the HRA (known) populations for each exam; (2) that the pass-fail rates on each exam are the same for both the HRA and non-HRA groups and (3) that the non-HRA candidates are a random sample

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the precise racial make-up nor the pass-fail rates of the non-HRA groups in Nos. 2013, 1097 and 1099 can be statis-

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of the total population which was eligible to take the open competitive examinations, #2013, 1097 and 1099.

Based on these assumptions, for which there is concededly no support in the record, Grammas computed hypothetical pass-fail rates for Blacks, whites and Hispanics in the non-HRA groups taking exams No. 2013, 1099 and 1097. He then compared these with the observed or real pass rates of each ethnic group on those examinations to see whether the hypothetical pass rates for the unknown groups accorded with the observed pass rates for the known group.

As to No. 2013, based on the assumptions described above, Grammas concluded that the hypothesized and observed rates are the same; i.e., that it is statistically probable (based on a 95% level of confidence) that disparate impact as to the unknown group was of the same general magnitude as the impact on the known group.

As to Nos. 1099 and 1097, for which Grammas made the same assumptions, the observed and hypothesized rates were signficantly different, leading him to reject the hypothesis that the differential impact was the same for the unknown group as for the known (observed) group. However, Grammas does not indicate the *degree* of probability that the observed and hypothesized rates were the same, other than to indicate that it is something less than 95% probable. (Grammas affidavit, Paragraph 15) This fact of course leaves open the posssibility, confirmed by Barrett, that although it is not statistically certain that the non-HRA groups showed the same disparate impact as the HRA groups, it is indeed likely that they would.

There are additional reasons why Grammas' computations are of limited relevance in determining the legal question before us: Grammas bases his computations of hypothetical pass-fail rates for the non-HRA group on three assumptions "which plaintiffs would need to make in order to establish disparate impact on the non-HRA population." (Grammas affidavit, Paragraph 9) This is clearly not the case. First, as noted above, it is not necessary that the non-HRA population have precisely the same racial make-up as the HRA population for disparate impact to exist as to the non-HRA population; the rate at which minority candidates pass does not hinge on the number of them appearing for the exam. Nor is it necessary that the pass-fail rates for minorities in the

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tically inferred from the data about the HRA groups whose ethnicity and pass-fail rates are known because the known group (HRA employees) is not a random or representative sample of the unknown (non-HRA) employees. (Grammas affidavit, dated November 7, 1974, Paragraphs 6-7, 20-23.) But that fact is not inconsistent with our conclusion. Strictly speaking, the precise racial make-up of the unknown groups in Nos. 2013, 1099 and 1097 is irrelevant; the issue rather is whether there is any realistic likelihood that non-HRA minority candidates—however many or few—fared well enough in comparison to non-HRA whites to offset the startling imbalance in favor of whites among the known (HRA) candidates. We conclude there is no such likelihood.

Defendants' second attack on plaintiffs' prima facie case can be disposed of more easily. They claim that, notwithstanding plaintiffs' prima facie showing as to the five examinations challenged in this lawsuit, they should not be

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non-HRA group be shown to be substantially identical to those in the HRA group in order to establish disparate impact. Non-HRA minorities could pass the exams at far higher rates than did the HRA minorities and still not dissipate entirely the minimum requisite prima facie showing of 1.5 to 1 established in *Chance*.

Third, it is not necessary that the non-HRA candidates were a "random sample of the total population which was eligible to take the open competitive examination." (Grammas affidavit, Paragraph 9) The more relevant question is whether the known HRA group is a reasonably representative sample of the combined HRA-non-HRA population that appeared for 2013, 1099 and 1097.

In sum, in view of the startling evidence of disparate impact among HRA employees and the complete lack of evidence suggesting that HRA minorities perform comparatively worse relative to HRA whites than their non-HRA counterparts, we conclude that the available figures for Nos. 2013, 1099 and 1097 are sufficient to establish a prima facie case.

permitted to choose among the exams in the HRS series, challenging only those in which minorities performed worst. Neither the facts nor the law support defendants' argument.

Of the nine examinations in the HRS series, five are challenged here. Plaintiffs do not challenge the four other exams in the series; however, the results for three of these are of record: the Sr. HRS (MDT) open competitive exam (No. 1094), the HRS promotional exam (No. 1625), and the HRS (MDT) open competitive (No. 1095). The statistics for these are indicated in the chart below:

Sr. HRS (MDT) Open Competitive Exam No. 1094

	Passed	*Failed*	*Total*	*% Passing*
Blacks	18	41	59	31%
Whites	5	10	15	33%
Hispanics	7	15	22	32%
Other	—	1	1	
Subtotal	30	67	97	
Unknown	18	78	96	19%
	48	145	193	

HRS Promotional Exam No. 1625

	Passed	*Failed*	*Total*	*% Passing*
Blacks	13	36	49	27%
Whites	1	4	5	20%
Hispanics	—	4	4	
	14	44	58	

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HRS (MDT) Open Competitive Exam No. 1095

	Passed	*Failed*	*Total*
Black	12	44	56
White	8	9	17
Hispanic	7	16	23
Subtotal	27	69	96
No ethnic info	12	74	86
	39	143	182

As to 1094 and 1625, it is evident that, although the results suggest roughly equal passing rates, the samples are too small to be valuable. As to No. 1094, if only one more white had passed, the passing rate for whites would rise from 33% to 40%; if two more whites had passed the rate would be 47%, as compared with a 31% rate for Blacks. These figures (47% v. 31%) compare favorably with the 1.5 to 1 ratio in *Chance*. As to No. 1625, if only one more white had passed, the rate would be 40% for whites, as compared with 27% and 0% for Blacks and Hispanics, respectively. The available figures show that as to 1095, only 17 whites took the exam as compared to 56 Blacks and 23 Hispanics, but in any event whites passed at over two times the rate of Blacks and 1.5 the rate of Hispanics (47% to 21% and 30%).

Comparison of the aggregate available figures for the five exams under challenge with the aggregate figures for all eight examinations demonstrates the shaky factual basis for defendants' argument.

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AGGREGATE RESULTS ON 5 EXAMS

	Passed	*Failed*	*Total*	*% Passing*
Blacks	173	601	774	22%
Whites	343	246	589	58%
Hispanics	24		110	22%

As the chart indicates whites passed at nearly 3 times the rate of minorities when the challenged exams are considered in the aggregate.

When the results for the three examinations not challenged by plaintiffs are added into the aggregate computation, the overall pass rates are not significantly altered:

AGGREGATE RESULTS ON 5 EXAMS

	Passed	*Failed*	*Total*	*% Passing*
Blacks	216	732	948	23%
Whites	357	269	626	59%
Hispanics	24	86	110	22%

We regard these figures as sufficient proof that plaintiffs' class performed significantly worse than whites and that the disparity is not the result of chance.

In any event, defendants' argument that the plaintiffs should not be permitted to challenge only those exams whose results show disparate impact is invalid as a matter of law. In *Vulcan*, defendants challenged plaintiffs' statistical case because it was based on a single examination, which they claimed was insufficient to be meaningful. In rejecting the argument Judge Weinfeld observed:

> "The consequence of relying upon one examination is only that any finding of discrimination and the relief to be granted will necessarily be restricted to the scope of the proof. The evidence presented was more than adequate to support a finding of discriminatory impact." 360 F.Supp. at 1271.

The observation applies with equal force in the case at hand.

III.

Job Relatedness

As noted earlier, defendants have the burden of justifying the use of the challenged examinations by proving that they are job-related, *Vulcan,* 470 F.2d at 391, and that the differential impact indicated by the statistics results from variance in qualifications for the job, rather than race. *Griggs* v. *Duke Power Co., supra,* 401 U.S. at 430-431, (1971), *Chance,* 330 F. Supp. at 214. This burden is discharged if the city "come[s] forward with convincing facts establishing a fit between the qualification and the job." *Vulcan,* 490 F.2d at 393, quoting *Castro,* 459 F.2d at 732; see also *Guardians,* 482 F.2d at 1337, *Chance,* 458 F.2d at 1176.

A. Case law in this Circuit recognizes three methods for validating an examination as job-related: criterion related validation, construct validation and content validation. See, e.g., *Vulcan,* 490 F.2d at 394-96; *Guardians,* 482 F.2d at 1337-1338 and 354 F.Supp. at 788-789; *Kirkland,* 374 F.Supp. at 1370-1372. Criterion-related validation is a

process by which relative performance on an examination is compared with relative performance on the job, either by "pre-testing" a group of current employees or by subsequent on-the-job evaluation of successful candidates. See *Vulcan,* 360 F.Supp. at 1273. This method is considered more effective than other validation methods because it clearly establishes the degree of correlation between successful examination performance and successful job performance. *Guardians,* 482 F.2d at 1337 and 354 F.Supp. at 788. However, no case in this Circuit has held that a showing of criterion validity is required for defendants to satisfy their burden of proving job-relatedness, if the test can be shown to have been validated by another method. See *Vulcan,* 490 F.2d at 395.

The second recognized method of validation is construct validation, which involves "identification of the general mental and psychological traits believed necessary to successful performance of the job in question," *Vulcan,* 490 F.2d at 395, and the construction of an examination which tests for these qualities. Defendants do not contend that they validated the examinations by either criterion validation or construct validation.

Consequently, defendants' proof on the issue of job-relatedness hinges on whether the examinations are "content valid." Judge Weinfeld described this method in *Vulcan*:

> "An examination has content validity if the content of the examination matches the content of the job. For a test to be content valid, the aptitudes and skills required for successful examination performance must be those aptitudes and skills required for successful

job performance. It is essential that the examination test these attributes both in proportion to their relative importance on the job and at the level of difficulty demanded by the job." 360 F.Supp. at 1274 (footnotes omitted). See also, *Vulcan*, 490 F.2d at 395; *Guardians*, 482 F.2d at 1338; *Kirkland*, 374 F.Supp. at 1372.

Cases in this Circuit have recognized the difficulties of applying sophisticated, and unfamiliar, principles of psychometrics to jobs about which the trier of fact has only superficial knowledge, and have dealt with the problem on a pragmatic basis. Judge Friendly's approving description of the approach Judge Weinfeld used in *Vulcan* sets the tone:

"Instead of burying himself in a question-by-question analysis of Exam 0159 to determine if the test had construct or content validity, the judge noted that it was critical to each of the validation schemes that the examination be carefully prepared with a keen awareness of the need to design questions to test for particular traits or abilities that had been determined to be relevant to the job. As we read his opinion, the judge developed a sort of sliding scale for evaluating the examination, wherein the poorer the quality of the test preparation, the greater must be the showing that the examination was properly job-related, and vice versa. This was the point he made in saying that a showing of poor preparation of an examination entails the need of 'the most convincing testimony as to job-relatedness.' The judge's approach makes excellent

sense to us. If an examination has been badly prepared, the chance that it will turn out to be job-related is small. *Per contra,* careful preparation gives ground for an inference, rebuttable to be sure, that success has been achieved. A principle of this sort is useful in lessening the burden of judicial examination-reading and the risk that a court will fall into error in umpiring a battle of experts who speak a language it does not fully understand. See *Chance, supra,* 458 F. 2d at 1173." 490 F.2d at 395-396.

B. The initial step in the construction of a content-valid examination is the "job-analysis." Its purpose is to identify the knowledge, skills and abilities required for performance of the job. Such an analysis involves the isolation of the qualities most critical to job performance, an evaluation or weighing of their importance relative to one another, and a determination of the level of competence required as to each of them. *Vulcan,* 360 F.Supp. at 1274, *Kirkland,* 374 F.Supp. at 1373. Obviously, the adequacy of the job analysis is crucial to a content-valid examination; unless the analysis accurately describes the "content" of the job, the content of the examination based on it is likely to be seriously distorted.

Accordingly, for defendants to sustain their burden of proof as to the content validity of the examinations in issue, they must show,

> "not only that the knowledge, skills and abilities tested for . . . coincide with some of the knowledge, skills and abilities required successfully to perform on

> the job, but also that 1) the attributes selected for examination are critical and not merely peripherally related to successful job performance; 2) the various portions of the examination are accurately weighted to reflect the relative importance to the job of the attributes for which they test; and 3) the level of difficulty of the exam matches the level of difficulty for the job." *Kirkland,* 374 F. Supp. at 1372.

Leonard Rosenberg prepared the job analysis for the five challenged examinations. He has been employed since 1956 in the Department of Personnel in New York City, and has had varied experience in the personnel field, primarily in the area of classification of civil service titles. Since 1970 he has been assigned to the Bureau of Examinations, where he is responsible for all personnel matters relating to the HRS Series of Titles. Although his earlier work had involved a large number of "desk audits" to determine whether a particular city employee was performing duties appropriate to his title, (Tr. 177), the job analysis for the challenged examinations[8] was the first he had undertaken for purposes of exam construction. (Tr. 230)

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[8] Although each examination under challenge included both written and oral components, and seniority of employees was given some weight on the promotional exams, plaintiffs concentrate their attack on the written portions only. Such an approach is appropriate because only candidates who passed the written test were given the oral exam or graded on seniority. Moreover, virtually everyone passed the oral examination and its only effect on the appointment lists was to raise or lower a candidate a few places on the list. It appears that no member of plaintiffs' class would be denied appointment as a result of the oral exam or seniority rating. See *Vulcan,* 360 F.Supp. at 1271-1272.

Rosenberg's job analysis for the title of Sup. HRS[9] was based on a series of visits to various HRA agencies and work locations during the period October 1-7, 1971. At the time of the visits, there were about 180 Sup. HRS provisionals scattered throughout HRA. (Tr. 374) However, to safeguard against leakage of information relating to the forthcoming exams, and pursuant to city policy, Rosenberg advised HRA officials that he wished to confer only with permanent Sup. HRS's. (Tr. 193) At the time of the audit there were seven permanent Sup. HRS incumbents, of whom Rosenberg interviewed four (Tr. 226). Beyond that he spoke to several HRA employees in higher titles and observed an unspecified number of HRA employees as they went about their work. (Tr. 224)

Defendants' Exhibit F is the two-page written job analysis which Rosenberg prepared on the basis of his visits.[10]

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[9] By stipulation dated April 30, 1974, the parties in *Williams* agreed that, if called, the witnesses who testified on behalf of defendants in *Jones* as to the job-relatedness of examinations 1631 and 2013 for the position of Sup. HRS would testify to the same effect with regard to the three examinations challenged in *Williams*, Nos. 1097, 1626 and 1099. Accordingly, we do not distinguish among the five examinations under challenge in our discussion of their preparation and job-relatedness.

[10] The first page lists several work locations Rosenberg visited and the names of the eight HRA employees (four permanent Sup. HRS's and four employees in superior positions) he interviewed about the job of Sup. HRS. The second page lists eighteen "Examples of Typical Tasks" which Rosenberg observed in the course of the audit, including, for instance, "supervision of staff," "solve problems of staff," "conduct staff meeting for control and safety purposes," "negotiations for funds to permit on-the-job development of disadvantaged residents of poverty areas of N.Y.C."

Each example is followed by several Roman numerals which designate the particular "knowledge and skills" Rosenberg found

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Rosenberg also prepared a one page test plan[11] (Defendants' Exhibit G1) based on the job analysis. The test plan lists eight areas to be covered on the Sup. HRS examination which are substantially identical to the eight knowledges and skills identified in the job analysis.

For the reasons discussed below, we find that the job analysis and test plan prepared by the city fall short of

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to be required in the performance of each task. The eight "knowledges and skills" include "Responsibilities of H.R.A. Central and its constituent agencies and relevant outside agencies," "Familiarity with developments and problems in programs affecting human resources and the amelioration or elimination of poverty," "Ability to supervise, direct and develop staff." According to the job analysis most of the typical tasks observed by Rosenberg require at least five of the listed "knowledges and skills": some required all eight.

[11] In pertinent part, the test plan is as follows:

Areas to be Covered		*Relative Emphasis*
I.	Function of H.R.A. its constituent agencies and other relevant public and private agencies	15%
II.	Current Developments and problems in the field of human services	10%
III.	Community relations and organization	10%
IV.	Judgment in on-the-job situations involving office services, payroll, budget and personnel	20%
V.	Techniques of staff development, supervision and guidance	20%
VI.	Machine, equipment and supply purchase, usage and management including safety	5%
VII.	Language usage including vocabulary and reading comprehension	10%
VIII.	Arithmetic computations and interpretations of tables, charts, and graphs	10%
		100%

professional standards as delineated by the testimony and applicable case law. First, the evidence establishes that Rosenberg's visits and interviews at work locations of HRA did not cover the full spectrum of tasks performed by those in the title of Sup. HRS. It is undisputed that Rosenberg did not interview people in most of the sub-agencies of HRA including, for example, the Agency for Child Development and the Youth Services Administration (Tr. 235, 381; see Defendants' Exhibit F). Consequently, the job analysis cannot—and on the face of it does not—[12] purport to be a complete profile of the job title. Without question, the city guidelines which prevented Rosenberg from interviewing provisionals in the course of his visits to HRA made a thorough job analysis nearly impossible. Of close to 200 employees in the title of Sup. HRS (about 180 provisionals and 7 permanent incumbents), the city's policy authorized Rosenberg to speak only to the seven permanent incumbents, and, in fact, he spoke to only four of these.[13]

The evidence establishes that a sample of four employees in the Sup. HRS title is insufficient to provide a full view of the job of Sup. HRS. All the witnesses agreed that it is difficult to imagine job titles broader than those in the

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[12] See note 10, *supra*.

[13] His failure to speak at least to all seven permanent Sup. HRS's is unexplained. We note, however, that Rosenberg's visits were arranged, at his request, by HRA officials; and that Rosenberg appears to have given no specific instructions regarding the number and variety of personnel he wished to see (Tr. 192-195).

HRS Series.[14] (see e.g. Tr. 275, 381-382, 393, 421, 425, 497-498, 501-502) Employees holding the generic title Sup. HRS may do jobs ranging from payroll and purchasing of supplies to public relations or program planning. (Defendants' Exhibit F) in twenty different kinds of programs (Tr. 381). Moreover, although there are a number of small clusters of Sup. HRS's who do approximately the same kind of work, there are no large sub-groups capable of easy categorization. (Tr. 382) In view of the variety of HRA activities, and work tasks associated with them, an insufficient interview sample would seriously distort the overall picture[15] (Tr. 572-575).

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[14] Some idea of the breadth of HRS's activities will aid in understanding the variety of tasks performed by those in the three generic titles of Specialist, Supervising Specialist and Senior Specialist—and the corresponding difficulty of developing job related examinations to select for those titles.

The purpose of HRA as established in 1966 was to effect a city-wide consolidation of programs in the areas of public assistance, social services, manpower development and employment and community action. The 35 year old Department of Social Services was HRA's major component. DSS included three federally-funded Bureaus of Public Assistance, Child Welfare and Special Services. In addition, the then Mayor Lindsay created, and placed within HRA, two other agencies: The Manpower and Career Development Agency, which combined all city manpower and employment services, and the Community Development Agency, which provided technical staff assistance for the Federal Community Action Program governed by the Council Against Poverty.

Later additions to HRA included the Youth Services Agency, created in 1967, and the Agency for Child Development, a 1971 consolidation of Headstart and City Day Care Programs. See Reorganization Plan for the City of New York Human Resources Administration (Defendants' Exhibit H).

[15] A concrete example of such possible distortion was mentioned several times in the course of the trial. Although questions relating to supervision of staff were given the maximum weight (20%)

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Defendants called two witnesses as to the adequacy of the job analysis. Everett Williams is a psychologist employed by the Educational Testing Service in Princeton, New Jersey. Mildred Katzell is a psychologist specializing in the field of measurement and evaluation. Their conclusion that the job analysis was professionally adequate (Tr. 409, 498) must be viewed in light of their criticism of the small sample and the restrictive city policy which caused it. Katzell conceded that "it might have been desirable to have a larger sampling of the total gamut of the types of positions that are circumscribed by this title." (Tr. 433-34) Williams testified that interviewing four out of seven permanent Sup. HRS's was "very adequate in terms of a sample percentage," but that "you typically would want to have more observation points if there are these wide differences [in tasks performed], usually between 10% to 25% of the total class." (Tr. 498-499) Williams made it clear that his opinion that the job analysis was adequate might change if the city's restrictions on interviewing provisionals were lifted. (Tr. 499-500) But

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on the test plan defendants' witness Harold Yourmans, Director of Labor Relations for HRA, testified that only 60-65% of those in the Sup. HRS title do any supervision at all (Tr. 341-2, 391). Rosenberg testified that he thought "most" Sup. HRS's have supervision responsibility, but did not supply a figure (Tr. 240-241). Of the four permanent incumbents he interviewed, three had duties involving supervision of other employees; one had little or none (Tr. 240). Although the 20% weight Rosenberg assigned to the "ability to supervise, develop and direct staff" roughly reflects his observations, as far as they went, it is evident that had Rosenberg seen, for example, one more or one less Sup. HRS with supervisory duties, the job analysis, test plan and examination might well have been weighted differently.

the professional and legal inadequacy of a job analysis is not cured simply because there is an extrinsic explanation for it, such as the city's policy here. In view of the wide variety of tasks performed by those in the title of Sup. HRS and the large number and varied type of subagencies within HRA, it is reasonable to assume that an adequate sample would approach the upper end of the 10-25% spectrum mentioned by Williams (Tr. 581-582). Accordingly, we regard the 2% sample used in the job analysis for Sup. HRS (four of a group of about 180) as critically insufficient.

Defendants argue that Rosenberg's prior experience with HRA matters, his interviews with employees in titles higher than Sup. HRS and his observations of many other employees whom he did not interview cure any deficiency in the sample. We disagree. Assuming that Rosenberg's prior experience in HRA matters gave him a general knowledge of the Sup. HRS title, his private knowledge about HRA, however extensive, cannot have been of value to persons constructing the examination unless committed to writing in the job analysis. See *Kirkland,* 374 F.Supp. at 1373-1374. But that is not the case here; on its face, the written job analysis purports to be based only on information gathered from Rosenberg's visits to HRA pursuant to his assignment to prepare the particular examinations in issue.

In any event, the value of Rosenberg's prior experience in personnel matters relating to HRA ought not be overestimated since, as noted earlier, it occurred primarily in the area of classification of job titles (Tr. 176-179, 218-

222). Such work demands substantially different methods than those required for a thorough job analysis to be used as the foundation of an examination (Tr. 230-231, 570-571, 577-579). Moreover, although the job analyses Rosenberg prepared for the three job titles in issue were the first he had done for an examination (Tr. 230); he spent only seven days to prepare the three job analyses. (Tr. 224) Rosenberg himself testified that a thorough job audit normally requires from a few days to two weeks (Tr. 229). Finally, although it was intended that Rosenberg actually prepare the examinations themselves, he was reassigned to another position and the task fell to Helene Willingham. Although Rosenberg may have known considerably more about the job of Sup. HRS than the written job analysis discloses, Willingham never secured the benefit of his knowledge. On the contrary, as it turned out Rosenberg took no part in the construction of the exam and did not review it before it was administered to insure that it matched the job profile (Tr. 201, 205, 210, 247).

Nor do the supplemental interviews of four employees in higher titles cure the inadequacy of the sample. Plaintiffs' expert, Felix Lopez, testified that such interviews could not substitute for the perceptions of those holding the job to be tested, and that an adequate sampling of both categories of employees was necessary to a proper job analysis. (Tr. 574-575)

The relatively casual approach which characterizes the sampling of the Sup. HRS population is evident in the written job analysis itself. A critical step in any job analysis is the largely inferential one of breaking down an ob-

served task into a set of component skills, abilities and knowledge (Tr. 521-522; 575-576) or, as Williams put it, a "going from some observation to a verbal description which is understandable to some set of people who will be involved in the act of putting together the [test]." (Tr. 525)

Lopez testified that he would not be able to construct a content-valid test on the basis of the job analysis and test plan. (Tr. 585) His criticisms were sensible and persuasive. First, the description of both "typical tasks" and "knowledge and skills"[16] are too ambiguous and unrefined to give any real idea about what the job involves and what is required to perform it. (Tr. 570, 572, 576, 580, 585-586; see also 518-519) The job analysis does not indicate what level of proficiency is required as to each skill, a critical defect. (Tr. 576-577, 580, 588) It does not explain how or why the skills in the test plan were weighted as they were, also a serious defect (Tr. 585-588); or even suggest—apart from the "examples of typical tasks"—that the jobs held by those in the title of Sup. HRS can be different from one another and require different abilities (Tr. 469-71).

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[16] For example, the task "negotiation for funds to permit on-the-job development of disadvantaged residents of poverty areas of N.Y.C." (Defendants' Exhibit F) might involve letter writing, attending meetings, face-to-face negotiation, legal research and many other skills the capsule description provides no clue as to which (Tr. 588). The task "Encourages Community Corporations to develop expertise so that they can become autonomous of C.D.A. supervision" is similarly ambiguous. The same criticism applies to the "knowledge and skills required," which include, for example, "ability to supervise and direct staff," "knowledge of community and public relations" and "skills in deciding problems relative to such on-the-job situations as office services, payroll, budget and personnel."

Neither Rosenberg nor defendants' experts satisfactorily refuted the existence of these defects in the job analysis. Rosenberg testified that in order to determine what knowledge or skills were essential to performance in the job, he "analyzed each and every one of the functions, activities, jobs, duties, and determined that they fit into certain common areas . . . and as a result came up with the eight categories that became, in effect, the test plan." (Tr. 199-200) These were weighted, Rosenberg testified according to "the incidence of the performance of specific types of duties and the essential importance, the criticality of the types of decisions that would impinge [sic] on knowledge or lack of knowledge in the specific areas." (Tr. 201-202)

Although Rosenberg correctly stated the general procedure to be followed he did not detail how it was applied to the job analysis for Sup. HRS (but see Tr. 257, 407-408, 587-588).[17] However, it is evident that no matter how well he applied the procedures, they could not have resulted in a thorough analysis. A determination that "each and every one of the functions, activities, job, duties" of a Sup. HRS fits into eight common areas is necessarily flawed where, as here, much of the spectrum of tasks remains uninvestigated. Similarly, a weighting of the relative importance of "knowledge and skills" which is based on the relative frequency of their occurrence requires a sufficient sample to insure reliable measurement. Yet, as the written job analysis frankly acknowledges, Rosenberg listed only "*examples* of *typical* tasks" (emphasis supplied).

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[17] In fact Rosenberg conceded that his consultation of previous notices of examination played a significant part in his determination of relative weights (Tr. 199).

C. Helene Willingham prepared the examinations for the title of Sup. HRS.[18] She has been with the Examining Division of the Department of Personnel since 1959 and has prepared over 200 examinations, most of them in the social services area (Tr. 259-60). In preparing the examination for Sup. HRS, she consulted the notice of examination, and the job analysis and test plan. However, the fact that she supplemented these with her own knowledge about the job title and ideas about what ought to go into the exam, (Tr. 280) and consulted the director of the Training Staff of HRA as to functions and skills involved in the Sup. HRS title (Tr. 279-280) suggests that she did not find Rosenberg's work sufficiently complete. For example, she felt that the area of the test plan relating to "machine, equipment and supply purchase, usage and management" was weighted too heavily because "it might have been too particular and too many people wouldn't know anything about it." (Tr. 291-292)

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[18] The determination of what sort of examination would be appropriate for the job titles in issue appears to have been casually made. Rosenberg, who was to construct the tests, considered giving an examination based partly on "training and experience". Such an exam involves rating of applicants partly according to a resume of their education and employment history, and partly on a normal written test of the multiple choice type (Tr. 205-206). However, Rosenberg appears to have left the scene before a final choice was made; the record does not indicate who made the critical decision as to the kind of test to be used (Tr. 521-522).

Moreover, the decision to peg the passing score on the examinations at 70% appears to have been based on administrative convenience rather than a determination that such a score separated those who are qualified for the job from those who are not. See *Kirkland*, 374 F. Supp. at 1577. Rosenberg testified that the passing grade was set at 70% because it was the normal City practice to do so (Tr. 248-249, see also Tr. 456-458, 612-616).

The raw material for the individual questions or "items" on the examination came from several sources. Willingham consulted "all sorts of HRA procedural material and newsletters" distributed to component agencies of HRA, various professional journals and government publications she thought relevant, and newspaper clippings and various texts. (Tr. 264-65) She also made extensive use of the training materials used in a course given by HRA to prepare candidates for the Sup. HRS exam. (Tr. 273-274)

On reviewing the test plan and job audit, Willingham determined that some questions ought to be constructed by her staff and others ought to be referred to experts in particular fields. (Tr. 270) Accordingly, she invited two outside experts to submit questions dealing with community organization and community relations, supervision and current events, of which nine or ten were used on the examination. (Tr. 272-273) There is no indication that Willingham prescribed any requirements as to the level of proficiency or areas of concentration the questions should test. Indeed, it would have been difficult for her to do so, since neither the job analysis nor test plan provides any basis whatever for such refinements.

Indeed a similar problem exists with regard to the approximately seventy questions prepared by Willingham and her staff.[19] Although she stated that "it was certainly pos-

[19] Of these seventy questions, Willingham based about twenty on materials used in an HRA training course (Tr. 274, 281) whose primary purpose was to prepare candidates for the examination (i.e., make them "test-wise"), rather than to make them more effective Supervising Human Resources Specialists (Tr. 281, 292-293). Although the course was free of cost and open to all provisionals (Tr. 281) there is no evidence as to how many people attended it (Tr. 294).

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sible to decide on certain critical knowledges" based on Rosenberg's materials (Tr. 291), Willingham did not explain how she did so; or decided such matters as the degree of difficulty of the questions. However, that is beside the point, since the fact that the job analysis and test plan needed refinement by Willingham suggests that they were inadequate to begin with.

Defendants' experts were unenthusiastic in their appraisal of the examination. Although Williams testified that the test was "reasonably well put together," both he and Katzell expressed reservations about the quality of the item construction. Katzell observed that it was "quite evident" that many of the myriad rules governing the proper phrasing of questions and multiple-choice options on the test were violated (Tr. 411-412, 503).

Lopez concluded the test was "poorly constructed" (Tr. 600). In particular he noted that many questions appear to have more than one correct answer—even to an expert

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It is noteworthy, however, that the course included "orientation in taking multiple choice questions, how to answer graph questions, reading questions" (Tr. 281), and that questions on graph interpretation and reading did in fact comprise a substantial portion of the Sup. HRS examination that Willingham constructed. These questions were the very ones which Willingham considered eliminating in view of their discriminatory bias (Tr. 298); moreover, there was substantial evidence that the examination favored "test-wise" candidates familiar with multiple choice examinations (Tr. 297-298, 314-316, 550-553, 609-612, 621-622, see also Barrett affidavit, Paragraph 8). In short, the City's concern for total security with regard to the possible contents of the exam (Tr. 200, 237-238, 281-282) appears to have boomeranged somewhat; since HRA officials saw neither the test plan nor examination prior to its administration. They were not in any position to prevent the possible advantage flowing to candidates who took the training course.

in the field; while others suggest the proper answer to a test-wise candidate who may not in fact "know" the answer. Indeed, the record suggests, if it does not establish, that the exam favored those with formal education, although only minimum educational requirements were imposed on candidates. (Tr. 590-597; 600-605; 621-622, see also Tr. 297-298, 312-316, 550-553, Barrett affidavit, Paragraph 8)

D. The evidence as to the inadequate manner and method of preparation of the job analysis and the examination creates the "rebuttable inference" that the examination is not job-related. *Vulcan,* 490 F.2d at 395-396. Although in cases of this type the primary emphasis is on the validity of the methods used in creating the examination rather than the independent validity of the end product, *Kirkland,* 374 F.Supp. at 1373, the opinion testimony as to the content-validity of the exam itself confirms our conclusion that defendants have not shown the examination to be job-related.

Harold Yourman, Director of Labor Relations at HRA, has been with the Agency since 1967. Although he observed that the exam "delves into the agency, HRA, [and] covers the full spectrum of HRA" (Tr. 362-363, 395) and is generally related to the position (Tr. 363), he expresses reservations about the substantial number of questions on supervision (Tr. 341-342, 391, 395) and conceded that the exam was not directly related to his earlier duties as a provisional Sup. HRS (Tr. 395-396).

Katzell is concededly not well-acquainted with the content of the job (Tr. 427) and her conclusion that the test "appears to have content-validity" (Tr. 479-80, 474-477)

must be viewed in that light. She observed, as is obvious, that the questions on reading comprehension, vocabulary and graph interpretation related to those areas on the test plan (Tr. 427). However, these were the very areas that Willingham considered eliminating from the test, because of their possibly discriminatory bias (Tr. 298, see also Tr. 292-300) and which Lopez particularly criticized (Tr. 608-612). As to other areas of the test, such as that dealing with knowledge of the constituent agencies of HRA, Katzell testified that it would be "desirable" or "appropriate" to have such knowledge (Tr. 475-477) but did not suggest it was critical.

Like Katzell, Williams stopped short of stating that the test was content-valid, observing only that procedures used to construct the test were consistent with content-validity (Tr. 504) and, somewhat tautologically, that successful performance on the test certifies that a candidate possesses the particular knowledge being tested for (Tr. 546-549; see also Tr. 247, 620). Indeed, none of the witnesses was willing to say that the test was useful for selecting those who were likely to perform well on the job, which as we view the matter is the only reason for administering it. (See Tr. 247-248, 390, 449, 546, 569-70, 590, 605, 612, 620-621)

E. As noted above, direct testimony regarding the manner of preparation and job-relatedness of the five examinations under challenge was for the most part limited to the two examinations (promotional and open competitive) for the position of Sup. HRS under attack in *Jones,* the parties stipulated that the same testimony would be given as to the examinations involved in *Williams.* Although

our findings as to the Sup. HRS exam require a finding that the other three exams (the open competitive exam for HRS and Senior HRS and promotional exam for Senior HRS) are not job-related, a comparison of the job analysis, test plans and examinations viewed as a group fortifies this conclusion.

For example, the job analyses and test plans for HRS and Senior HRS (Plaintiffs' Exhibits 8 and 9) identifying "knowledge and skills" and "areas to be covered" that are almost identical to those listed in the analysis and plan for Sup. HRS; the relative weights assigned to the areas of the test are also substantially identical for all three titles. (Tr. 616-619) Not surprisingly, therefore, the tests based on these documents were very similar; Willingham, who prepared them, stated that the exams for HRS and Sr. HRS had forty questions in common (of a total of eighty), as did those for Sr. HRS and Sup. HRS. However, she sought to make the other forty questions on each test somewhat more difficult than those on the next lower level (Tr. 318-320).

The problem with Willingham's approach is that the job analyses and test plans provide no basis for rational differentiation between the three levels to be tested. (Tr. 618-620, 662-663) The fact that the materials prepared for the three titles do not distinguish to any appreciable extent between the nature of the jobs or the level of competence needed to perform them confirms our conclusion that the examinations were not carefully prepared and, consequently, not job-related.

F. Although what we have said so far decides the case, it is necessary to comment further on certain factors

which set the present suit somewhat apart from other cases of this type and which, as defendants view the matter, support a finding of job-relatedness.

In *Chance, Vulcan, Bridgeport Guardians* and *Kirkland,* the public agencies involved either had prepared no job analysis at all, or pieced one together from pre-existing documents of doubtful value for purposes of exam preparation. Moreover, with the possible exception of *Chance,* which involved supervisory positions in the New York City school system, the cases deal with positions (policeman, fireman and correction sergeant) whose component skills and tasks are relatively easy to define. This combination of factors somewhat simplified the determination as to job-relatedness in earlier cases.

The present suit does not readily fit into the mold established in earlier decisions. It is evident that the "job" of Supervisor HRS is not a job in the same relatively restrictive sense as the job of policeman or fireman. Indeed, as Rosenberg acknowledged, jobs performed by individuals in the title of Supervising HRS may have nothing in common with each other except salary and general level of responsibility (Tr. 243). Not surprisingly, therefore, defendants argue that the exams in issue pass constitutional muster even though they are not demonstrably related to a definable "job". They contend that because HRA cannot in fact predict the type of work to which an individual might be assigned, the examinations were designed to test mastery of skills which Rosenberg found to be basic to all jobs performed by Supervising HRS's (see Tr. 199, 202, 240-243, 251-252, 275, 546).

The weakness of this argument is that defendants have not established either that there is in fact such a core of

skills common to all jobs within the extraordinarily diffuse titles in issue (see Tr. 393-395, 421-422, 470-471) or that Rosenberg successfully identified them. Indeed, the evidence suggests the contrary. To cite the most obvious example, the examination for Sup. HRS involved twenty to twenty-five questions (of a total of eighty) relating to supervisory skill but, as noted earlier, only 60% to 65% of those in the title actually have supervisory responsibility (Tr. 391, 478).

Moreover, the ten questions on the promotional exam for Sup. HRS relating to the internal organization of HRA were understandably attacked as peripheral to the duties of many individuals in the title; (Tr. 474) it is difficult to see how such questions can be considered essential to all those in the title in view of the fact that the *open competitive* exam for Sup. HRS omitted these very questions in favor of more general questions dealing with "Functions of Relevant Public and Private Agencies" (Tr. 278-279).

Indeed, if defendants are correct that the examinations tested skills common to all jobs within the title and were job-related, it is nearly past understanding why substantial numbers of provisionals at all three levels failed the examination; and why the overall pass rates for the open competitive exams for Sup. HRS and HRS were higher than on the promotional exams for the same titles.[20] (See Tr. 450-

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[20] On the Sup. HRS exam, 31% of the candidates passed the promotional exam, while 36% passed the open competitive exam. On the HRS exam 24% passed the promotional exam; 33% passed the open competitive. 37% passed the open competitive exam for Sr. HRS; 41% passed the promotional exam.

Even more significantly, only 41 out of 174 provisional Sup. HRS's passed the test to qualify for permanent employment in the position they were already performing. See plaintiffs' memorandum in support of application for preliminary relief, page 6.

457, 248, 327-328, 392-393, 615-616) Many of the provisionals who failed the exams in issue had been in their jobs for two years or more and, significantly, the only evidence in the record indicates that they were highly effective performers.[21] Despite the fact that the existence of large numbers of provisionals who had taken the tests provided a unique opportunity for a concurrent validation study, (Tr. 529 ff.) defendants have come forward with no evidence to suggest that provisionals were doing an inadequate job.

IV.

REMEDY

Plaintiffs seek and are entitled to declaratory and injunctive relief. Accordingly, Examinations 2013, 1631, 1097, 1099 and 1626 are declared unconstitutional and defendants are enjoined from making appointments from eligible lists based on their results, and from terminating the provisional appointments of those in plaintiffs' proposed class to their respective positions solely because they failed the examinations.

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[21] The named plaintiffs have filed affidavits of their supervisors as well as HRA performance rating forms which uniformly indicate a high level of professional performance on the very jobs for which they were tested here. See, e.g., affidavit of Miguel Martinez, dated September 8, 1974; affidavit of Carolyn Gentile, dated September 7, 1973, both in support of plaintiffs' application for a preliminary injunction.

Defendants' witness, Harold Yourman, testified that the provisionals with whose work he was familiar were all competent performers (Tr. 392).

In addition, plaintiffs seek affirmative relief (1) requiring defendants to appoint an unspecified number of members of plaintiff class to the three positions "based on their experience, education and qualifications," including evaluation of their performance as provisionals; (2) directing defendants to develop and administer either written examinations in accordance with the EEOC guidelines,[22] or some other selection process which is non-discriminatory and job-related; (3) establishing a temporary procedure for selection to the three positions while new permanent procedures are developed or, alternatively, (4) directing the permanent appointment of the present provisionals to the jobs they now hold.

Although the invalidation of the five examinations in issue authorizes the court to fashion appropriate affirmative relief, see *Louisiana* v. *United States,* 380 U.S. 145, 154 (1965), *Guardians,* 482 F.2d at 1340, the proper course is to defer decision as to the nature and extent of affirmative relief to enable defendants to respond to proposals set forth in plaintiffs' post-trial brief. Accordingly, defendants are directed to file a memorandum on these issues within ten days of the filing of this Opinion, with plaintiffs to submit any reply within one week thereafter.

There remains the matter of plaintiffs' motion for a class action determination in both *Williams* and *Jones.* Plaintiffs' proposed class is composed of Blacks and Hispanics who took and failed one or more of the five challenged examinations; or who took and passed an examination but

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[22] See "Equal Employment Opportunity Commission Testing and Selecting Employees Guidelines," 29 C.F.R. §1607 at §1607.5(a).

scored too low to be initially appointed. Defendants have no objection to the grant of class status if the class is limited to those who failed an exam. However, although plaintiffs have satisfied the requirements of Rule 23, there is no need to designate a class; plaintiffs have requested only declaratory and injunctive relief, which will in any event benefit all members of the proposed class. See *Vulcan,* 360 F.Supp. at 1266-1267, note 1; *Bridgeport Guardians,* 354 F.Supp. at 783; 3B Moore, Federal Practice ¶23.10-1 at 2768 (2d Ed. 1969). Accordingly, the motion is denied.

Plaintiffs' request for an award of reasonable attorneys' fees is denied. Although counsel fees were awarded in *Kirkland,* 374 F.Supp. at 1380-1382, they are not appropriate in the present suit. *Kirkland* involved an examination for the position of correction sergeant, whose preparation did not present the uniquely difficult problems involved in testing for the titles in issue here. Moreover, while in *Kirkland* there was an almost complete failure of proof on the issue of job-relatedness, we are impressed in the present case by the sincere efforts of Rosenberg and Willingham to construct tests in accordance with the stringent legal standards applicable in this Circuit, however inadequate the examinations proved to be.

Submit order.

MORRIS E. LASKER
U.S.D.J.

Dated: New York, New York
January 10, 1975.

Supplemental Opinion Dated March 19, 1975

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[CAPTION OMITTED]

Appearances:

COVINGTON, HOWARD, HAGOOD & HOLLAND, Esqs.
15 Columbus Circle
New York, New York 10023

DEBORAH GREENBERG, Esq.
JACK GREENBERG, Esq.
JEFFREY MINTZ, Esq.
10 Columbus Circle
New York, New York 10015
Attorneys for Plaintiffs

W. BERNARD RICHLAND, Esq.
Corporation Counsel of the
City of New York
Municipal Building
New York, New York 10007
Attorney for Defendants

PAULA J. OMANSKY, Esq.
Assistant Corporation Counsel

Supplemental Opinion Dated March 19, 1975

LASKER, *D.J.*

Plaintiffs move, pursuant to Rule 54(b), Federal Rules of Civil Procedure, for an order revising our Opinion filed January 10, 1975, by striking from it the paragraph relating to plaintiffs' request for counsel fees, (Slip Op. at 42-43), and substituting a statement that we reserve decision on that issue pending clarification of the applicable law by the Court of Appeals for this Circuit and the Supreme Court.

Putting aside the procedural objections to such a course, which are persuasively set forth in Defendants' Memorandum in Opposition, the motion is denied.

We do not agree with plaintiffs that the uncertain state of the law as to the award of counsel fees in §1983 cases justifies the unusual relief requested here. Trial courts are regularly called upon to rule when the law is not settled; we have done so in the present case and adhere to the conclusion reached in our January Opinion.

It is true that we awarded counsel fees in *Kirkland* v. *N.Y. State Department of Correctional Services,* 374 F. Supp. 1361, 1380-1382 (S.D.N.Y. 1974). In doing so, we noted that the issue of availability of attorney's fees in §1983 cases is "novel, at least in this Circuit," and catalogued at some length decisions of other Courts of Appeal which approved the award of fees in similar cases, "without relying on a showing of bad faith or unreasonable obduracy of defendants." 374 F.Supp. at 1381.

We did not express a view as to whether a trial court *must* award counsel fees in every §1983 case in which fees would have been awarded had the suit been brought by a

parallel jurisdictional route, e.g., Title VII of the 1964 Civil Rights Act. Indeed, it was not necessary in *Kirkland* to determine that issue; having found that counsel fees may be awarded in §1983 cases even in the absence of bad faith, we awarded fees on the strength of our finding that "positive evidence of job-relatedness is conspicuous by its absence." 374 F.Supp. at 1378. In short, we held only that a showing of bad faith was not a prerequisite to recovery of fees; we did not hold that defendants *good* faith is not a factor to be considered in determining whether an award should be granted.

Shortly after *Kirkland* was filed, the Court of Appeals furnished a pair of clues as to its view on the subject. *Jordan* v. *Fusari,* 496 F.2d 646 (2d Cir. 1974), decided four weeks after *Kirkland,* was a §1983 class action in which the trial judge awarded attorneys fees to successful plaintiffs who claimed unemployment compensation benefits, the fees to be paid out of the recovery. On appeal, the appellee argued that moneys in a state's unemployment fund are payable solely for unemployment benefits. Appellants disputed that contention and argued, for the first time on appeal, that fees were in any event recoverable on the private attorney general theory espoused in *Newman* v. *Piggie Park Enterprises,* 390 U.S. 400, 402 (1968). Noting that this alternative theory had not been presented to the district judge, the court remanded the issue, observing that appellants' new contention might "well justify a judgment imposing reasonable attorneys fees on defendant, without deduction from the awards to plaintiffs' class." 496 F.2d at 650-651.

Supplemental Opinion Dated March 19, 1975

While *Jordan* indicated the possible availability to successful plaintiffs in a §1983 case of attorneys fees, it did not suggest under what circumstances they are properly awarded. The Court of Appeals intimated those standards in *Bridgeport Guardians, Inc.* v. *Bridgeport Civil Service Comm'n,* 497 F.2d 1113, (2d Cir. June, 1974). Appellants argued that the court below had abused its discretion by refusing to award attorneys fees. The trial judge found it had discretion to award such fees, but denied them because the litigation was not compelled by defendants' "unreasonable, obdurate obstinacy," see *Stolberg* v. *Trustees for the State Colleges of Connecticut,* 474 F.2d 485, 490 (2d Cir. 1973). In affirming, the court did not "rule out the possibility that counsel fees might be appropriate in *some* §1983 cases," but stated that "the failure of Congress to provide for such fees . . . is significant," 497 F.2d at 1115 (emphasis added). Because the court found only that the trial judge had not abused his discretion in denying fees, it did not comment on the legal standard applied by the trial judge. However, it did note that some of the factors to be considered in determining whether an award is to be made are "all the facts of [the] case, the contribution made by counsel for plaintiffs, as well as the reasonableness of the resistance to the plaintiffs' claims by the defendants." 497 F.2d at 1115.

As we read *Jordan* and *Bridgeport Guardians,* the Court of Appeals—if it holds that awards are available at all in §1983 cases—would not award them virtually as a matter of right, as in cases involving explicit statutory authorization. Following the suggestion of the Court of Appeals in *Bridgeport Guardians, supra,* we believe that the proper

standard for awards in §1983 cases lies somewhere in between "automatic" awards and those available only on the very stiff showing of defendants' bad faith.

This is the standard we applied—and intended to apply—in *Jones* in declining plaintiffs' request on the ground that defendants had made reasonable efforts to comply with constitutional requirements which, in the field of civil service testing, appear to be unusually difficult to satisfy.

The motion is denied.

It is so ordered.

MORRIS E. LASKER
U.S.D.J.

Dated: New York, New York
March 19, 1975.

Opinion Dated April 4, 1975

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[CAPTION OMITTED]

Appearances:

COVINGTON, HOWARD, HAGOOD & HOLLAND, Esqs.
15 Columbus Circle
New York, New York 10023

DEBORAH GREENBERG, Esq.
JACK GREENBERG, Esq.
JEFFREY MINTZ, Esq.
10 Columbus Circle
New York, New York 10015
Attorneys for Plaintiffs

W. BERNARD RICHLAND, Esq.
Corporation Counsel of the
City of New York
Municipal Building
New York, New York 10007
Attorney for Defendants

PAULA J. OMANSKY, Esq.
Assistant Corporation Counsel

Opinion Dated April 4, 1975

LASKER, *D.J.*

By Opinion dated January 10, 1975, we declared unconstitutional five examinations in the Human Resources Occupational Series because they had a discriminatory impact on Blacks and Hispanics and were not established to be job-related. We deferred decision on the extent of the affirmative relief to be granted so that the parties might express their views on the issue.

As stated in our January Opinion, plaintiffs seek and are entitled to a declaration of the unconstitutionality of the five examinations, and an injunction against the use of the exam results as the basis either for making appointments to positions in the Human Resources Occupational Series, or terminating those presently serving in such positions. Plaintiffs are also entitled to an order that defendants prepare either new written examinations for the challenged positions in accordance with EEOC guidelines, or develop some other selection process which is job-related and non-discriminatory.

In addition, plaintiffs request an order that all provisional employees (not merely plaintiffs) in the three titles in issue be permanently appointed if they: (1) had served in their respective positions for at least six months prior to the commencement of these lawsuits; (2) have received satisfactory performance ratings from their supervisors; and (3) took one of the challenged examinations.

Alternatively, plaintiffs request that the defendants be directed to grant "acting" permanent appointments to provisionals meeting such requirements, and not to terminate

them except for disciplinary reasons, pending the preparation of new examinations.

Defendants argue that adoption of either of plaintiffs' proposals would run afoul of the requirement of the New York State Civil Service Law that permanent appointments be based on "merit and fitness," which they claim the present provisionals have not established.

Such an argument was firmly rejected in *Chance,* 496 F.2d 820, 823 (2d Cir. 1974) and indeed its adoption would leave a court powerless to grant any sort of affirmative relief pending the preparation of new examinations. Moreover, it is difficult to conceive of a group more "fit" for interim appointment than the present provisionals. (Opinion, p. 40, n. 21)

However, that issue need not detain us because, as we view the matter, the nub of the disagreement between plaintiffs and defendants arises from fiscal considerations rather than strictly legal ones. Plaintiffs argue that in a period of municipal job freezes and layoffs they cannot obtain truly effective relief unless they are at least partially shielded from the prospect of termination, which defendants acknowledge to be a well-founded concern. They also urge that if the City had not administered constitutionally inadequate exams in the first instance they would already be permanent appointees and, as such, far less likely to be terminated than provisionals.

Although plaintiffs' appeal to the equities has considerable attraction, the proposed relief presents problems of its own. First, as they concede, it favors provisionals, who received appointment to their present positions more or less fortuitously, at the expense of candidates who took

the open competitive exams for the same positions. For example, in operation plaintiffs' proposed plan would result in the appointment of provisionals who took and failed the promotional exam over candidates who passed the open competitive exam. Moreover, because plaintiffs contemplate the permanent appointment of all provisionals, and not merely Blacks and Hispanics, a white provisional who failed his exam would be appointed over a Black who passed the open competitive exam. In our view the divisiveness which might well result is itself a strong argument against the proposed relief.

Moreover, the ramifications of granting permanent appointments to provisional employees extend well beyond the parties and subject matter involved in the present lawsuits. The appointment of a large number of HRA employees by court order, at a time when the jobs of hundreds of other city employees may also be insecure, represents judicial intervention on a large scale. We have strong doubts as to the desirability of such a course where, as here, there is and can be no assurance that the particular provisionals involved would necessarily have been appointed pursuant to a valid examination.

The subject matter of these suits is the manner in which appointments must be made to the positions in issue, rather than the terms on which the City may terminate them. Because the latter issue has not been litigated and indeed is not even ripe for litigation, there is no basis for insulating the present provisional employees from termination when other City employees have no such protection.

Nevertheless, plaintiffs present a serious proposition: that the provisionals are likely to be terminated if layoffs

occur at HRA and that the sole reason why many, if not all of them are not in the more secure position of permanent employees is that the City administered invalid examinations. In such circumstances, provisionals should at least be given a reasonable opportunity to seek relief in the courts if indeed the issue ripens and HRA plans to terminate them. Accordingly, the City shall give fifteen days notice of its intention to terminate any plaintiff presently serving as a provisional employee in the three titles in issue.

By our January 10 Opinion, we denied plaintiffs' motion for class status. Plaintiffs renew their motion and defendants do not oppose it. Because those other than the named plaintiffs may have occasion to seek relief under the judgment, the motion is granted and our denial of the earlier motion is vacated. The class is defined as all Blacks and Hispanics who failed the five examinations in issue or who passed but scored too low to be appointed.

Submit judgment in accordance with this memorandum.

MORRIS E. LASKER
U.S.D.J.

Dated: New York, New York
April 4, 1975.

Endorsement Dated May 9, 1975

73 Civ. 3815

JAMES C. JONES, *et al.*,

Plaintiffs,

—v.—

THE NEW YORK CITY HUMAN RESOURCES ADMINISTRATION, *et al.*,

Defendants.

74 Civ. 91

DOROTHY WILLIAMS, *et al.*,

Plaintiffs,

—v.—

THE NEW YORK CITY HUMAN RESOURCES ADMINISTRATION, *et al.*,

Defendants.

LASKER, *D.J.*

Defendants move to amend our memorandum of April 4, 1975 by deleting the determination of plaintiffs' class status and the direction that the final judgment provide for fifteen days notice to any member of plaintiffs' class presently serving as a provisional employee in the three titles in issue.

Endorsement Dated May 9, 1975

On consideration of the arguments of counsel, which they presented to the court with their usual enthusiasm on April 22, 1975, the motion is disposed of as follows:

We adhere to our conclusion that class status is appropriate in these cases. See *Sosna* v. *Iowa*, —— U.S. —— (1975), 43 U.S.L.W. 4125 (January 14, 1975), *Claudia Frost* v. *Weinberger*, 74-2020, Slip Op. (2d Cir. April 17, 1975) and cases cited there. However, the class is newly defined as all Blacks and Hispanics who failed any of the five examinations in issue.

On the City's assurance that HRA's procedures already provide and will continue to provide fourteen days notice to all employees whom the City plans to terminate, we vacate our earlier determination that the final judgment provide for fifteen days notice of termination.

Defendants may submit a proposed judgment within 10 days, together with their comments, if any, on the plaintiffs' proposed judgment.

The motion is granted to the extent indicated in this memorandum.

It is so ordered.

MORRIS E. LASKER
U.S.D.J.

Dated: New York, New York
May 9, 1975.

Final Order and Judgment Dated May 23, 1975

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[CAPTION OMITTED]

This action having been tried to the Court without a jury, and the Court having made findings of fact and conclusions of law by opinion dated January 10, 1975, declaring Examination Nos. 2013, 1631, 1099, 1626 and 1097, prepared and administered by the New York City Department of Personnel, for appointment within the New York City Human Resources Administration to the positions of Supervising Human Resources Specialist, Senior Human Resources Specialist and Human Resources Specialist to be unconstitutional, and setting the said examinations aside; and the original parties hereto having filed memoranda in relation to the relief which should be afforded in accordance with the findings and conclusions of the Court; and the Court having expressed its views on the issue of relief by opinion dated April 4, 1975, and May 9, 1975 it is Ordered, Adjudged and Decreed:

1. Case No. 73 Civ. 3815 (Jones v. H.R.A.) and Case No. 74 Civ. 91 (Williams v. H.R.A.) are hereby consolidated for all purposes.

2. These actions are hereby certified as class actions under Rule 23 of the Federal Rules of Civil Procedure, with

the class to be limited to those Blacks and Hispanics who failed any one of the examinations heretofore adjudged to be invalid and unconstitutional.

3. Examination Nos. 2013, 1631, 1099, 1626 and 1097 are declared invalid as violating the Constitution of the United States.

4. The defendants New York City Human Resources Administration, New York City Department of Personnel, and New York City Civil Service Commission, and the named defendants Sugarman, Bronstein, Smith and Stadtmauer, and their agents, employees, and successors in office are permanently enjoined from:

(a) making permanent or provisional appointments to the positions of Supervising Human Resources Specialist, Senior Human Resources Specialist and/or Human Resources Specialist in the New York City Human Resources Administration based upon the results of Examination Nos. 2013, 1631, 1097, 1626 and/or 1099 or any eligible list promulgated pursuant to any of the said examinations;

(b) administering or promulgating eligible lists based upon, or in any way acting upon the results of Examination Nos. 2013, 1631, 1097, 1626 and/or 1099 for the positions of Supervising Human Resources Specialist, Senior Human Resources Specialist, and/or Human Resources Specialist.

5. The defendants, their agents, employees and successors in office, are mandatorily enjoined to develop lawful non-discriminatory selection procedures for the positions of Supervising Human Resources Specialist, Senior Human

Resources Specialist and Human Resources Specialist. In so doing, they shall adhere to the following general guidelines:

(a) The new selection procedures shall be developed within the shortest practicable period;

(b) The new selection procedures shall be developed and, before usage for promotional or appointment purposes, validated in accordance with the EEOC Guidelines on Employment Selection Procedures, 29 C.F.R. §1607.1 (1970), as those Guidelines are or as later revised.

6. The defendants shall submit to the court within thirty days a detailed plan for the development of the selection procedures described in Paragraph 5 hereof, and furnish a copy of the plan to plaintiffs. Two weeks thereafter plaintiffs shall submit to the court and defense counsel in writing such comments as they may have with regard to the propriety of the defendants' plan. Thereafter the court shall approve the plan as submitted or shall order such modification as it deems necessary to carry out the terms of this judgment.

7. The preliminary injunction against the administration of a promotional or open competitive examination for the position of Principal Human Resources Specialist is discontinued. Defendants shall publish the Notice of Examination for the position of Principal Human Resources Specialist at least 30 days before the date on which any such examination is scheduled to be administered.

Final Order and Judgment Dated May 23, 1975

8. Plaintiffs' request for the award of counsel fees to plaintiffs' attorney is denied.

Dated: New York, New York
May 23, 1975.

MORRIS E. LASKER
U.S.D.J.

Defendants' Notice of Appeal in *James C. Jones et al.*

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

Index No. 73 Civ. 3815

M.E.L.

JAMES C. JONES, GLORIA DE BERRY, MARY J. ECCLES, *et al.*,

Plaintiffs,

—against—

THE NEW YORK CITY HUMAN RESOURCES ADMINISTRATION, *et al.*,

Defendants.

SIRS:

NOTICE is hereby given that the defendants hereby appeal to the United States Court of Appeals for the Second Circuit from the judgment entered on May 23, 1975 which declared the examinations herein to be invalid and this appeal is taken from each and every part of said judgment as well as from the whole thereof.

Defendants' Notice of Appeal in James C. Jones, et al.

Dated: New York, N. Y.
June 6, 1975

Yours, etc.,

W. Bernard Richland
Corporation Counsel
Attorney for Defendants
Office & P. O. Address
Municipal Building
New York, N. Y. 10007

By Carl Sanders

To:

Covington, Howard, Hagood & Holland
Attorneys for Plaintiffs
15 Columbus Circle
New York, N. Y. 10023

Deborah Greenberg
Jack Greenberg
Jeffrey Mintz
Attorneys for Plaintiffs
10 Columbus Circle
New York, N. Y. 10015

Defendants' Notice of Appeal in *Dorothy Williams, et al.*

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

Index No. 74 Civ. 91

M.E.L.

DOROTHY WILLIAMS, JOHN GOYCO and JOHNNIE MCCOY, *et al.*,

Plaintiffs,

—against—

THE NEW YORK CITY HUMAN RESOURCES ADMINISTRATION, *et al.*,

Defendants.

SIRS:

NOTICE is hereby given that the defendants hereby appeal to the United States Court of Appeals for the Second Circuit from the judgment entered on May 23, 1975 which declared the examinations herein to be invalid and this appeal is taken from each and every part of said judgment as well as from the whole thereof.

Defendants' Notice of Appeal in Dorothy Williams, et al.

Dated: New York, N. Y.
June 3, 1975

Yours, etc.,

W. Bernard Richland
Corporation Counsel
Attorney for Defendants
Office & P. O. Address:
Municipal Building
New York, N. Y. 10007

By Carl Sanders

To:

Covington, Howard, Hagood & Holland
Attorneys for Plaintiffs
15 Columbus Circle
New York, N. Y. 10023

Deborah Greenberg
Jack Greenberg
Jeffrey Mintz
Attorneys for Plaintiffs
10 Columbus Circle
New York, N. Y. 10015

Plaintiffs' Notice of Appeal in *James C. Jones, et al.*

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

Index No. 73 Civ. 3815

M.E.L.

JAMES C. JONES, GLORIA DE BERRY,
MARY J. ECCLES, *et al.*,

Plaintiffs,

—against—

THE NEW YORK CITY HUMAN RESOURCES
ADMINISTRATION, *et al.*,

Defendants.

SIR:

NOTICE is hereby given that the plaintiffs hereby appeal to the United States Court of Appeals for the Second Circuit from the judgment entered herein on May 23, 1975 which declared that the examinations herein to be invalid and this appeal is taken from so much of such judgment as denied plaintiffs' request for the award of counsel fees to plaintiffs' attorneys.

Plaintiffs' Notice of Appeal in James C. Jones, et al.

Dated: New York, N.Y.
June 16, 1975

Yours, etc.,

COVINGTON, HOWARD, HAGOOD
& HOLLAND
15 Columbus Circle
New York, N.Y. 10023
Attorneys for Plaintiffs

By (Illegible)

To:

W. BERNARD RICHLAND
Attorney for Defendants
Office & P.O. Address:
Municipal Building
New York, N.Y. 10007

DEBORAH GREENBERG
JACK GREENBERG
JEFFREY MINTZ
Attorneys for Plaintiffs
10 Columbus Circle
New York, N.Y. 10015

Plaintiffs' Notice of Appeal in *Dorothy Williams, et al.*

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

Index No. 74 Civ. 91

M.E.L.

DOROTHY WILLIAMS, JOHN GOYCO and
JOHNNIE MCCOY, *et al.*,

Plaintiffs,

—against—

THE NEW YORK CITY HUMAN RESOURCES
ADMINISTRATION, *et al.*,

Defendants.

SIR:

NOTICE is hereby given that the plaintiffs hereby appeal to the United States Court of Appeals for the Second Circuit from the judgment entered herein on May 23, 1975 which declared that the examinations herein to be invalid and this appeal is taken from so much of such judgment as denied plaintiffs' request for the award of counsel fees to plaintiffs' attorneys.

Plaintiffs' Notice of Appeal in Dorothy Williams, et al.

Dated: New York, N.Y.
June 16, 1975

Yours, etc.,

COVINGTON, HOWARD, HAGOOD
& HOLLAND
15 Columbus Circle
New York, N.Y. 10023
Attorneys for Plaintiffs

By (Illegible)

To:

W. BERNARD RICHLAND
Attorney for Defendants
Office & P.O. Address:
Municipal Building
New York, N.Y. 10007

DEBORAH GREENBERG
JACK GREENBERG
JEFFREY MINTZ
Attorneys for Plaintiffs
10 Columbus Circle
New York, N.Y. 10015

AFFIDAVIT OF SERVICE ON ATTORNEY OF PRINTED PAPERS

City, County and State of New York, ss.:

BRUCE GARNER

being duly sworn, says, that on the 27 day of AUG., 1975

at No. 10 COLUMBUS CIRCLE in the Borough of MANH. in The City of New York, he served ~~three~~ 2 copies

of the annexed JOINT APPENDIX, VOL I + II upon DEBORAH GREENBERG, etc. Esq.,

the attorney for the PLTFFS. in the within entitled action by delivering

~~three~~ 2 copies of the same to a person in charge of said attorney's office during the absence of said attorney therefrom, and leaving the same with him.

Sworn to before me, this 27
day of AUG., 19 75

Miriam Mulberg

MIRIAM MULBERG
Commissioner of Deeds
City of New York - No. 3-1669
Commission Expires July 1, 1977

Bruce Garner

AFFIDAVIT OF SERVICE ON ATTORNEY OF PRINTED PAPERS

City, County and State of New York, ss.:

BRUCE GARNER

being duly sworn, says, that on the 27 day of AUG., 1975

at No. 15 COLUMBUS CIRCLE in the Borough of MAN'H. in The City of New York, he served ~~three~~ 4 copies

of the annexed JOINT APPENDIX, VOL I + II upon COVINGTON, HOWARD HAGOOD & HOLLAND Esq.,

the attorney for the PLTFFS-APPLES-APPLT'S. in the within entitled action by delivering

~~three~~ 4 copies of the same to a person in charge of said attorney's office during the absence of said attorney therefrom, and leaving the same with him.

Sworn to before me, this 27
day of AUG., 1975

Bruce Garner

Miriam Mulberg

MIRIAM MULBERG
Commissioner of Deeds
City of New York - No. 3-1669
Commission Expires July 1, 1977

DUE AND TIMELY SERVICE OF 3 COPIES OF THE
WITHIN , IS HEREBY ADMITTED
THIS DAY OF , 19

Attorney for

DUE AND TIMELY SERVICE OF 3 COPIES OF THE
WITHIN , IS HEREBY ADMITTED
THIS DAY OF , 19

Attorney for

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